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H.R. 361, THE OMNIBUS EXPORT ADMINISTRATION
ACT OF 1995

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H.R. 361, The Omnibus Export Admini...

MARKUP
BEFORE THE
COMMITTEE ON
INTERNATIONAL RELATIONS
HOUSE OF REPRESENTATIVES
ONE HUNDRED FOURTH CONGRESS
SECOND SESSION

MARCH 29, 1996

Printed for the use of the Committee on International Relations



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MARKUP OF H.R. 361, THE OMNIBUS EXPORT ADMINISTRATION ACT OF 1995

FRIDAY, MARCH 29, 1996

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERNATIONAL RELATIONS,
Washington, DC

The committee met, pursuant to notice, at 10 a.m. in room 2172, Rayburn House Office Building, Washington, DC, the Honorable Benjamin A. Gilman, chairman, presiding.

Chairman GILMAN. The committee will come to order.

The Committee on International Relations meets today in open session pursuant to notice to mark up the Omnibus Export Administration Act, H.R. 361.

I am pleased that we are able to hold this meeting today during which our committee will consider long overdue reform in the Export Administration Act. And today we will also re-establish the U.S.'s statute on dual-use export and reassert the jurisdiction of this committee over this important body of law.

And while H.R. 361 provides greater transparency on U.S. export control laws and greatly reduces the number of days needed for issuing export licenses, it mandates tighter restrictions of exports and re-exports to terrorist nations. And, most importantly, it adds controls on countries not supporting multi-lateral efforts to counter the proliferation of weapons of mass destruction.

This measure also contains several provisions which will ensure that the Department of Commerce has the policy, tools, and statutory authority to deny or suspend licenses to questionable end users and to increase its enforcement efforts in key markets, such as China, where there is a growing need to ensure that our high-tech exports are not improperly diverted to military application.

In short, this is a well-balanced bill addressing regional and global proliferation threats while streamlining and modernizing antiquated export control procedures in the cold war era.

I ask my colleagues to support an en bloc amendment that will be offered later on in this markup, which will help to ensure greater scrutiny in the end-use monitoring of sensitive dual-use technology that will be going to China and will ensure that an export control attache be assigned specific responsibilities of performing pre-license checks and post-shipment verifications in that country.

As we begin, I want to pay special tribute to the gentleman from Wisconsin, Toby Roth, chairman of the Subcommittee on International Economic Policy and Trade, who will be offering the bill today.

I would also like to commend the ranking Democrat on the committee, the gentleman from Connecticut, Mr. Gejdenson, for his long-standing efforts with regard to this issue.

I am now going to ask Mr. Gejdenson if he has any opening remarks.

Mr. GEJDENSON. Thank you, Mr. Chairman.

Again, I would like to say how much I will miss Mr. Roth. I said in an earlier markup in the subcommittee that our relationship over the years has been positive and cooperative and continues to be as it has been when he was in the minority and now that I am in the minority. It confused a lot of people. But we have always had a good working relationship, and he has made a positive contribution in this committee for many years. I will miss him.

And I want to particularly again commend Ed, his chief of staff, for the great work he has done.

Chairman Roth has had a difficult situation, without any question. He has made an extraordinary effort toward cooperation to produce a bill that is acceptable to the Administration and to the National Security Committee. Sometimes it seems to me he went a little too far in accommodation.

As much as I respect Mr. Roth and as much as I like him, I am unable to endorse this bill. It will not really result in any changes in the cumbersome bureaucracy of export control apparatus in the executive branch.

We will still have interminable delays in licensing, knee-jerk imposition of unilateral controls, and no effective way for exporters to petition the government to redress the issues of unfair impact on U.S. export controls.

As a result, the business community is not lining up in support of this bill, and we will continue to have the same problems we have had in the past.

In fairness, the bill does some important things. It transforms the law into one that addresses the threat of non-proliferation. This is an important change and one that is required to more accurately deal with the security threats in today's world.

The bill does include a prohibition on dual-use exports to terrorist countries. This goes along with language in my legislation, H.R. 3109. This provision would prevent militarily sensitive dual-use items from being exported to terrorist countries.

There is no excuse for sending to terrorist countries goods or technologies which could increase their ability to wreak havoc and terrorism on the world.

However, there are some serious concerns I have with this bill.

First of all, the timeframe. The timeframe in this bill, to be generous, is as much as 180 days, 3 to 6 months. Now, if you remember the GM strike and what happens in a world of just-on-time production, in about 7 days, GM had to start shutting down its plants.

So an American manufacturer selling parts around the world who is entering a licensing process that really has no end in sight but runs from 3 months to 6 months, easily is a process that does not work in the modern world.

It is further complicated by the organization that replaced CoCom, the Wassenaar Arrangement. Because what you have there

is basically if lists an item, then every country gets to license it basically in their own process.

Well, guess what, you think Germany is going to be taking 6 months to license products? I certainly do not think so.

And, third, after all the discussion and bloodletting that went on, neither the bill nor the Administration approach deals adequately with commodity jurisdiction. There is nothing in this bill which defines the differences between dual-use items controlled by Commerce and munitions controlled by State.

Not surprisingly, the existing definition of munitions is extremely inclusive. It allows the Administration to go back to the days where bank cards were considered munitions.

My fourth concern is with section 114(k), which is intended to give U.S. exporters relief from unfair impact of our own export controls. The bill before us originally allowed for a claim of unfair impact to be based on foreign availability, the inability to control an item domestically, or a control resulting in a significant competitive disadvantage.

This bill has been narrowed to allow such a claim only on the basis of foreign availability and whatever else the Secretary of Defense agrees to. That does not make a lot of sense to me. It seems to me the American business community is unfairly disadvantaged. And, frankly, we do not gain a lot of advantage for the security needs of the country.

When you look at the situation of what we are doing here again, we are going to be taking leading technologies where we are most competitive which have nothing to do with nuclear proliferation or the security of the United States and giving away advantages to the French, to the Germans, and to the Japanese.

We just have to think back to what this country did to the American machine tool industry. We had an industry that was foremost in the world; we would not let them export because the technology was too sensitive; the Defense Department stopped all the exports of high-tech machine tools; they lost the international market; then they lost the domestic market; and then they lost the qualitative edge. And after a while, the Defense Department was demanding that we purchase Japanese machine tools.

The industries that we are looking at today in computers and high tech are very fast moving industries. This piece of legislation will continue to do damage to America's competitive position and will not do much good to stop the kind of proliferation that we really need to focus on.

Chairman GILMAN. Thank you, Mr. Gejdenson.

Mr. Roth.

Mr. ROTH. Thank you, Mr. Chairman.

First of all, let me commend you, Mr. Chairman, for your leadership in bringing this bill to the full committee.

The Export Administration Act of 1996 is the first major revision in export control systems since 1979. So you can see how important it is that we bring the law up to date.

I want to thank the staff on both sides of the aisle, especially Ed Rice, John Scheibel, Chris Hankin, and all the others who have worked so long and hard on this legislation.

Our subcommittee has worked on this issue on a bipartisan basis for nearly a decade. The legislation before us today builds on a measure that was approved by this committee in the 103d Congress.

Let me commend the gentleman from Connecticut, Mr. Gejdenson, for all the work that he has done on this issue over the years. I know that he has a couple of concerns about the bill. Nevertheless, we should all recognize that his leadership has been essential in the committee's work on export control reform.

Mr. Chairman, this bill is a bill that every member of this committee and this House can vote for and should vote for.

The bill achieves three important goals:

First, it revises an old, out-of-date law, focusing export controls on today's problems: proliferation and terrorism.

Second, it gives the President important new tools to counteract the spread of weapons of mass destruction, missiles, and deadly technology used by terrorists around the world.

And, third, it streamlines the export licensing system.

This bill improves the ability of our high technology exporters to compete in today's global economy.

Enactment of this bill will increase American exports and add new jobs for American workers. We have worked for 14 months to craft a carefully balanced bill. I have discussed this with the President personally three times, and I have worked closely with Tony Lake, the President's National Security Advisor.

A high-level group at the White House has worked with the committee staff in weekly sessions for more than a year. And I want to think them for the time and energy they have put into this legislation.

At the same time, we have worked with Chairman Spence of the National Security Committee and his staff to make sure that their concerns are taken care of. I am confident that this legislation will meet with Chairman Spence's approval.

And, finally, I have discussed this with the Speaker, with Senator Dole, and my counterpart in the Senate, Senator Bond. All of them are interested in completing action on export reform this year.

The result of all this work is that after years of false starts and roadblocks, we have a bill that can be supported by all Members, that can be passed by Congress, and that can be signed into law.

Mr. Chairman, I ask my colleagues to join in supporting this bill, to reform the Export Administration Act, to strengthen our fight against proliferation and terrorism, to streamline our export licensing system and to help our exporters complete and create jobs for all Americans.

Thank you, Mr. Chairman.

Chairman GILMAN. Thank you, Mr. Roth.

Does any other member seek recognition?

Mr. Manzullo.

Mr. MANZULLO. I would just like to commend Mr. Roth and Mr. Gejdenson for the tremendous amount of effort and work that has gone into forging this document.

As you know, last year we also had a bill and were down to, I think, a difference of one word; and the Export Administration Act Reauthorization died last year.

I have, in the district that I represent, 1800 manufacturing facilities, from a one-person shop to major corporations with thousands of employees. And the district I represent is probably one of the most exporting congressional districts in the country, not only in agricultural products but especially machines and machine tools and other manufactured products.

So we are excited about the new EAA. We think this is going to make things obviously a lot easier to sell overseas and to greatly speed up the licensing process.

Chairman GILMAN. Thank you, Mr. Manzullo.

Any other member seeking recognition?

If not, the Chair will lay this bill before the committee and the clerk will report the title of the bill.

Ms. BLOOMER. H.R. 361. A bill to provide authority to control exports and for other purposes.

Chairman GILMAN. Without objection, the amendments adopted by the Subcommittee on International Economic Policy and Trade are adopted and will be considered as an original text for the purpose of amendment.

And without objection, the bill as amended will be considered as having been read and open to amendment at any point.

[The bill, H.R. 361, as amended by the subcommittee amendments, appears in the appendix.]

Chairman GILMAN. The Chair takes pleasure now in recognizing the distinguished chairman of the International Economic Policy and Trade Subcommittee, the sponsor of the measure, Mr. Roth, to introduce the bill.

Mr. ROTH. Thank you, Mr. Chairman.

The bill has been introduced; and, without objection, I would first like to include a technical amendment.

Chairman GILMAN. The clerk will distribute the technical amendment.

The clerk will read the amendment.

Ms. BLOOMER. Amendment to the amendment in the nature of a substitute to H.R. 361 offered by Mr. Roth.

In section 114(j), on page 156, line—

Chairman GILMAN. Without objection, the amendment will be considered as having been read.

[The amendment to H.R. 361, offered by Mr. Roth, appears in the appendix.]

Chairman GILMAN. The gentleman from Wisconsin is recognized for 5 minutes on his amendment.

Mr. ROTH. Thank you, Mr. Chairman.

This amendment has been requested by the Administration. It is a technical amendment that has been cleared with the Minority.

It clarifies that the President may, in certain limited cases, require a license under the provision of 114(j).

This is because, for certain very sensitive goods and technologies, a license requirement may be necessary even though the percentage of sensitive technology involved in export is quite low.

The provision ensures that the President could, for instance, block a re-export of U.S. hot section technology even though it was part of a large foreign aircraft.

This amendment does not make this exception the rule but rather allows the President discretion to use it in very special circumstances.

The Administration felt—and I believe that Mr. Gejdenson will also support this amendment—that in certain cases, limited cases, we have to give the President discretion.

And I ask the members to vote for this amendment.

Thank you, Mr. Chairman.

Chairman GILMAN. Is any member seeking recognition on the amendment?

If not, the question now is on the amendment by the gentleman from Wisconsin.

As many as are in favor, signify in the usual manner.

Opposed?

The ayes appear to have it. The ayes have it. The motion is agreed to.

Mr. Roth on the measure.

Mr. ROTH. Mr. Chairman, I have another amendment coming under Section 114(k).

Chairman GILMAN. The clerk will distribute the amendment.

The clerk will read the amendment.

Ms. BLOOMER. Amendment to the amendment in the nature of a substitute to H.R. 361 offered by Mr. Roth.

Page 157, beginning on line 22, strike—

Mr. ROTH. Mr. Chairman.

Chairman GILMAN. Mr. Roth.

Mr. ROTH. I ask unanimous consent that the amendment be considered as read.

Chairman GILMAN. Without objection, the amendment will be considered as having been read.

[The amendment to H.R. 361, offered by Mr. Roth, appears in the appendix.]

Chairman GILMAN. The gentleman from Wisconsin is recognized for 5 minutes on the amendment.

Mr. ROTH. Thank you, Mr. Chairman.

Mr. Chairman, basically what we are doing here is preserving foreign availability. What we were asked to do was to look at forward foreign availability.

Mr. Chairman, as I said in my opening statement, one of the fundamental goals is to reach an agreement with the National Security Committee. This is the only way we can move forward and get this legislation passed.

This amendment is offered at the request of Chairman Spence. The amendment makes two changes to the provisions of what is called foreign availability.

Let me explain what foreign availability basically means.

Under EAA, an exporter can petition for relief from export controls on the grounds that his product is available overseas. This does not automatically grant relief, but the government must take this into account.

This is what is called "foreign availability." This amendment makes two changes to the bill.

First, it removes a specific reference to looking at the future, availability of a product and leaves a definition of foreign availability up to the executive branch.

Second, the amendment says that, in drafting regulations to define foreign availability, the Secretary of Commerce will obtain the concurrence of the Secretary of Defense.

Now, in the real world, this happens already. What we are doing is putting this in the form of an amendment here. This means that the Defense Department will play a role in writing basic regulations for foreign availability.

It is my understanding that the Secretary of Defense would be consulted in any rulemaking process anyhow.

Let me emphasize that adopting this amendment will complete our work with the National Security Committee. We have been working with them for some 14 months. It will give us a bill that both committees will support.

Adoption of this amendment will expedite consideration of the bill on the floor. If we do not adopt this amendment, the National Security Committee, of course, will take sequential jurisdiction of the bill and add other amendments.

So the bottom line is that by adopting this amendment, we are in lock step with the Security Committee and we will be able to take this bill to the floor and pass this bill.

I ask that the committee support this amendment.

Chairman GILMAN. Thank you, Mr. Roth.

Mr. Gejdenson.

Mr. GEJDENSON. Mr. Chairman, I strongly oppose this amendment.

This amendment does not represent reform as much as my friend Toby would like to focus it as a reform step. It is a great step backwards. This is essentially telling Mr. Hunter and those on the Armed Services Committee that they ought to write all the language in the bill. I mean, at some point it is not worth having a piece of legislation if the only thing you do is keep taking steps backwards.

The specific language regarding a forward look approach of foreign availability came from the Department of Defense. It was precisely this approach, to look at foreign availability, under which the Administration justified its de-control of computers in 1993 and 1995.

Both of these proposals followed proposals from the Department of Defense.

So this amendment undermines the existing practice and will make it more difficult to deal with competition in the world in modern technology.

I mean this is as if you built the wheelbarrow and you have got handles you are about to attach to it, and they say: Oh, no, you can export wheelbarrows, but you cannot have handles. Then you show them a picture of your competitor and he is starting to put handles on his but they are not complete yet, so we are still not going to allow the export of wheelbarrows.

This technology is so rapidly moving that to de-control on the basis of foreign availability of what is on the shelf, you are already 6 or 8 months behind. You buy a 133-megahertz computer, before you get it home, they are selling 166- and 200-megahertz computers.

This provision in the bill just makes it worse. Mr. Roth's subcommittee provided in the original text that if an item is expected with a high degree of certainty to be widely available, in fact, in the near term so as to render controls ineffective, then an exporter could petition the government for a change in those controls.

When the Administration de-controlled computers in 1993 and 1995, it recognized that situation.

So what we are doing here again is we are allowing the folks in the defense committee to start ratcheting down, to take a time when we ought to be taking advantage, without risking security of the situation, to actually make it more difficult for exporters to export.

It is the wrong direction.

I would like to ask, I guess, Mr. Reinsch a question or two on this issue.

Chairman GILMAN. Would you please identify yourself for the record.

Mr. REINSCH. Yes, sir. My name is Bill Reinsch. I am the Under Secretary of Commerce for Export Administration.

Mr. GEJDENSON. Does the Administration support this amendment?

Mr. REINSCH. Mr. Gejdenson, this amendment would remove a concept that is in the Administration bill and which we have employed in the past, as you have indicated; so we would oppose the amendment.

Mr. GEJDENSON. And was the language on prospective foreign availability requested by DoD?

Mr. REINSCH. In the bill? I do not recall that, Mr. Gejdenson. It is a concept that we have employed with respect to the computer decisions in particular that you have cited.

Mr. GEJDENSON. So the standards are the same standards that you are presently operating under and we are now going to take a step back from that?

Mr. REINSCH. That is correct.

Mr. GEJDENSON. And why did the Administration use this standard in de-controlling computers?

Mr. REINSCH. We felt it was important there. And I think that is not the only sector, Mr. Gejdenson; but it is a good example of a sector where technology is moving very rapidly.

The concept of foreign availability is designed to permit our control process to stay up to date with the march of technology so that we are not controlling previous generations of technology, things that are old news, so to speak, and widely available.

And we felt that from a business standpoint it was important not just to take a static look at foreign availability—i.e., what is available today or yesterday in the marketplace—but, particularly in cases of fast moving technology, to take a dynamic look at the marketplace and try to anticipate what was going to happen so that

our manufacturers can be on the cutting edge in capturing market share and not be always behind.

Mr. GEJDENSON. Thank you.

Mr. ROTH. Mr. Chairman.

Chairman GILMAN. Mr. Manzullo has requested to be next.

Mr. MANZULLO. I have a question perhaps the Administration could answer it or one of my colleagues up here.

Is there any type of a timeframe within which the Secretary of Commerce and the Secretary of Defense have to come to "terms of condition"?

Mr. REINSCH. Within the amendment, as I read it, no, Mr. Manzullo.

Mr. MANZULLO. Is that a problem with anybody?

Mr. Gejdenson.

Mr. GEJDENSON. I think the amendment is a very bad step. In a bill that does not do that much to begin with, we are now heading in the wrong direction.

Mr. MANZULLO. Let me ask you a question. The amendment says: "For purposes of the subsection, foreign availability exists when the controlled item is available, in fact, under terms and conditions established by the Secretary with the concurrence of the Secretary of Defense."

This means, obviously, that there has to be a joint decision by both Secretaries as to the meaning of foreign availability.

And my question is: Is there a timeframe within which they have to come to a definition?

And the second question is: What if they do not come to terms and conditions as to what defines foreign availability on the part of a particular controlled item?

Mr. ROTH. Would the gentleman yield?

Mr. MANZULLO. Sure. Of course.

Mr. ROTH. This amendment is not a step backwards. The reason is it does not cancel any rights that exporters have right now.

What it does do is leave the definition up to the President.

What we are addressing here is the term we call "future foreign availability".

Mr. MANZULLO. This makes the definition more fluid; is that what you are trying to do?

Mr. ROTH. Yes, it does. It does not address the issue of foreign availability overall, but specifically future foreign availability.

Mr. MANZULLO. In the last Congress, on our attempt to rewrite the EAA, I had an amendment in there that lifted the end tops on computers. And now the Administration has actually gotten ahead of the bill and that provision, I believe, is no longer in here. And I presume that the purpose of this amendment, Mr. Roth, and Mr. Under Secretary, is to have that same type of a floating or a fluid definition that is dynamic because of the advance of technology.

Mr. ROTH. Would the gentleman yield just for 30 seconds?

Mr. MANZULLO. Sure.

Mr. ROTH. I think that Under Secretary Reinsch and yourself would agree that this amendment does not prevent a look forward.

What it does do is give the President the power of definition. It gives the President more flexibility. And I think that is what we want to do; because, in this fast-moving world, you do not want to

tie the President's hands. So I think that it actually expedites rather than hinders.

Mr. BEREUTER. Would the gentleman yield?

Mr. MANZULLO. Sure.

Mr. BEREUTER. I thank the gentleman for yielding.

I was looking at the same problem a few minutes ago myself, and my understanding is that in terms of preparing this definition of foreign availability between the two Secretaries, the gentleman is right, there is no time limit.

The consideration of the individual product, then, under the definition of foreign availability that is established would continue to be 120 days.

Mr. MANZULLO. So there is that 4-month period that if there is no action, if there is no definition, then the license is granted in 4 months?

Mr. REINSCH. Perhaps I could clarify, if that would be helpful.

The amendment that Mr. Roth offered relates to the development of regulations with respect to how foreign availability would be dealt with.

There are other provisions of the bill that do provide time limits for the consideration of specific availability petitions or requests. And those times would be limited by the statute.

You have pointed out that in this particular case there would not be a time limit, as the amendment is presently phrased, on the development of regs.

I would say that in this Administration we have developed regs concurrently with all agencies anyway, and we would not contemplate entering into this process without consulting with the Department of Defense and also with the Department of State and the Department of Energy and ACDA, the agencies that are involved in this.

I think the concern that I expressed about the amendment had more to do with its beginning, and that is the deletion of the explicit nature of the concept of forward-looking availability, which was in fact what your provision in 1994 also addressed, and which was embodied in our computer decision subsequently.

Mr. MANZULLO. Thank you.

Chairman GILMAN. The gentleman's time has expired.

Mr. Hamilton.

Mr. HAMILTON. Thank you very much, Mr. Chairman.

I will speak in opposition to the Roth amendment, but I do want to say that I think that Congressman Roth has really done excellent work in bringing this bill forward. And, of course, so has Mr. Gejdenson.

I also think the Administration has been very cooperative in trying to develop a bill here. This is extraordinarily complicated legislation, and there has been a lot of good work done on it.

I understand that Mr. Roth is in a very difficult position here because the National Security Committee has requested this change.

And if I understand their position, they will oppose the bill if this amendment is not adopted.

Mr. ROTH. Would the gentleman yield?

Mr. HAMILTON. Yes.

Mr. ROTH. I appreciate your kind remarks.

You are absolutely right. But it is a little bit more than that. You see, if we adopt this amendment, then we will not have sequential referral to the National Security Committee.

If we adopt this amendment, we can take this bill directly to the floor.

What I am concerned about is not so much this amendment; but if we have sequential referral and it goes over to that committee, they take the whole bill apart and we will never have legislation because they will come up with all kinds of other amendments.

That is why I am asking the committee to support this amendment, because with this amendment, we would go directly to the floor.

Mr. HAMILTON. I appreciate that, and I understand that the position of the National Security Committee puts you—indeed, puts the committee—in a difficult spot.

But it is also important, I think, to recognize that this is an important issue not just for the National Security Committee. It is also a very important issue for U.S. exporters, and my information is that if this amendment is adopted, then they are going to have a lot of doubts about whether or not they will support this bill.

I have a couple of major concerns about it. One is that we all recognize that technologies are changing at a very rapid pace. And if our export controls do not adjust to that pace, then we are going to lose exports, and we are going to lose jobs.

The provision in the bill, not the amendment, but the provision in the bill enables our government to anticipate likely changes in technology and market conditions that will have a bearing on U.S. export competitiveness.

Now what this amendment does is it prevents, as I understand it, any consideration of future market conditions, no matter how certain those future market conditions may be, in determining whether or not U.S. export controls unfairly impact American exporters.

Under this amendment, as it is drafted, the U.S. Government would not be able to take into account the planned launch of a major new product or technology even 1 week in the future. They would have to act as if that development were not going to occur.

Now, I just think that goes too far. Common sense dictates that we should be able to take into account future developments in the market.

Now, the second point that causes me concern is the role of the Defense Department. The amendment requires the concurrence of the Secretary of Defense in determining whether or not an item is available abroad, not in the future, but in the present.

That kind of foreign market determination is clearly within the expertise of the Commerce Department and not within the expertise of the Department of Defense. The Department of Defense does not have that role today under current law, and I am not aware that any problems have developed because it does not have that role.

The principal point here is that the amendment prevents any consideration of future market conditions. And that just does not make any sense at all. That goes way too far.

I have to oppose this amendment even though I recognize that Mr. Roth is in an extremely difficult position here.

Chairman GILMAN. Thank you, Mr. Hamilton.

Mr. Houghton.

Mr. HOUGHTON. Yes. I would like to ask Mr. Roth maybe to explain something. This may be a narrow definition, and maybe I am missing the point.

But I do not see why this does not do great harm to those people who want to not only sell their product or a service but also create an atmosphere for them, without undue restraint, by the Department of Defense who, in the past, has always wanted to hold back even technologies which are commercially available on the market.

Mr. ROTH. Well, the truth of the matter is, Mr. Houghton, that the reason we have not had a bill since 1979—and we have worked on this since 1979—is because you have always had this fight between Defense and Commerce, and others. But the truth of the matter is that the debate is between these two agencies. If it were up to the Defense Department, there are some people there who would not sell anything overseas. I had one Member of Congress tell me he would not sell a Winchester 73 overseas. You know, that is totally unrealistic.

But what we are trying to do here is to fashion a bill that gives the President the right to define what foreign availability means. That is what we are doing under this amendment.

And in doing so, we circumvent some of the past opposition from the National Security Committee so that we can take this bill from here directly to the floor.

That is what I was trying to do. We are trying to work out a compromise so that we can get a bill after some 17 years.

Mr. HOUGHTON. I understand that. But specifically with the concurrence of the Secretary of Defense, it just seems an undue, uncommercial, restrictive burden which is going to do us no good.

Mr. ROTH. Mr. Houghton, I know exactly what you are saying. I think, however, it is not as bad as it appears.

I will tell you why. In the real world, the Secretary of Defense is going to help Commerce write these regulations anyhow; and all we are doing here is codifying it. We are saying that the Secretary of Defense has a role in defining and drafting the regulations.

Mr. HOUGHTON. But did not we have a fight here last year over this very issue, trying to get the Defense Department out of the decisionmaking process?

Mr. ROTH. That has been the fight we have had for 17 years, yes.

Chairman GILMAN. Thank you, Mr. Houghton.

Mr. MANZULLO. Mr. Chairman.

Chairman GILMAN. Mr. Manzullo.

Mr. MANZULLO. On page 80 of the bill, under section 109, I would like to ask either Mr. Roth or the Undersecretary whether or not section 109 and the provisions for time in there, the timeframes; do those apply to that subsection (B) on page 157, which Mr. Roth's amendment is trying to change?

Mr. REINSCH. If I may respond, Mr. Manzullo, the answer is no. The time lines in section 109 apply to decisions about granting specific licenses.

A petition on foreign availability would be outside the consideration of a regular license.

Mr. MANZULLO. Sell it with a bill license because it is available; is that correct?

Mr. REINSCH. Pardon me? I am sorry. I did not hear you.

Mr. MANZULLO. Permission to sell it and if it is widely available, otherwise there would be no need for a license.

Mr. REINSCH. Well, normally, the process that Mr. Roth's amendment relates to would be a case where an industry comes in and asks that an item be de-controlled in its entirety because of availability.

Mr. MANZULLO. Right. Is there any timeframe on that?

Mr. REINSCH. Yes, there is. It is within section 114.

Mr. MANZULLO. Section 114, then, would govern?

Mr. REINSCH. If you look at page 160 of the bill beginning on line 15, you will see the Secretary would have to make a determination on that request within 120 days after we receive the petition.

Mr. MANZULLO. So the issue of whether or not it is available on the foreign market would be governed by the timeframe on page 160 is what you are saying; is that correct?

Mr. REINSCH. With respect to a position on foreign availability, seeking the de-control of, say, computers above a certain level, it would be governed by that.

If someone came in with a specific sale that they were proposing of a particular computer to a particular destination and wanted to argue that we should grant that on grounds of availability, the only basis for considering that would be in the timeframes in section 109 as a regular licensing license request.

Mr. MANZULLO. So we do have timeframes that govern Mr. Roth's amendment?

Mr. REINSCH. That is correct.

Mr. ROTH. Would the gentleman yield?

Mr. MANZULLO. Of course.

Mr. ROTH. Let me just say, for individual cases, which I think is what you are referring to, this amendment does not touch that. Basically what this amendment does is three things:

It does not prevent a forward look. What it does is leave that up to the President so he has got more flexibility.

The Defense Department's role in writing regulations, would happen anyway.

And, third, I would say it does not retreat from any exporter's right. Any right the exporter has today, he has after this amendment, too.

Mr. MANZULLO. So this—

Mr. ROTH [continuing]. does not refer to individual cases.

Mr. MANZULLO. This is just broad, generic categories?

Mr. ROTH. The regulations, right.

Chairman GILMAN. The gentleman's time has expired.

Is anyone else seeking recognition?

Adoption of this amendment is essential to our efforts to secure the full cooperation in support of our colleagues on the National Security Committee.

It preserves the concept of foreign availability for controlled items but strikes ambiguous language trying to quantify such nebulous concepts of future foreign availability.

It is better to establish a current base line for foreign availability in making the determination as to whether the requirement for a license would be affected in achieving the purpose of the control.

Adoption of this amendment would accomplish this objective and would avoid endless debate in how you would measure availability of a controlled item, in fact, at some future date.

In sum, then, this amendment will clarify a concept that is not adequately defined in this bill.

I query: How can foreign availability be defined in fact in the future with no timeframe indicated in the bill?

I submit that adoption of this amendment is essential to future consideration of the bill and will ensure prompt floor consideration of the measure.

The question is on the amendment offered by Mr. Roth.

Mr. BERMAN. Mr. Chairman, could I ask a question?

Chairman GILMAN. Mr. Berman.

Mr. BERMAN. This is for, perhaps, the sponsor of the amendment.

The underlying bill, does the underlying bill require that if there is a finding of foreign availability that the license must be granted?

Mr. ROTH. Yes.

Mr. GEJDENSON. Will the gentleman yield? It is a right of petition.

Mr. ROTH. Future foreign availability or foreign availability?

Mr. BERMAN. May I clarify?

Chairman GILMAN. If the gentleman will withhold. Is someone asking—

Mr. ROTH. The answer would be no.

Chairman GILMAN. Mr. Berman.

Mr. BERMAN. I have heard no and yes. And if there is a third option, I would like to know.

Mr. REINSCH. Well, I know I am not allowed to vote, but if I can express an opinion, the provision in the bill would not require de-control if we found foreign availability. The issue here is essentially about the right to petition for that purpose.

One of the options that the Secretary would have is de-control. He has other options. And he could also determine that, notwithstanding availability, he is not going to take any of those actions.

Mr. BERMAN. All right. Then my question is: If he would have the right, notwithstanding a finding of foreign availability to refuse to de-control based on impact on the national security interests of the United States or whatever, what is the need for this amendment?

Mr. REINSCH. Well, that is a question that I think should be directed to the author of the amendment.

Mr. GEJDENSON. You are talking about the underlying language?

Mr. BERMAN. No. If the underlying language leaves with the executive branch the ability to keep on the control list an item which is available from other countries, then I want to know what is the need for the amendment other than to get the bill to move.

Mr. ROTH. Will the gentleman yield?

Mr. BERMAN. Yes, I would.

Mr. ROTH. I think it was very well expressed by the chairman of the committee, Mr. Gilman, in his statement.

What it does is, it gives the President flexibility and also expedites passing of the legislation, because we do not have sequential referral to the National Security Committee.

Mr. BERMAN. I understand the latter part of that answer is this will help grease the wheels; but the first part of that question, what more flexibility do you need than you have in the underlying text of the bill which gives the Administration, as we have just been told, unfettered discretion to control, de-control, without regard to whether or not the item is available in sufficient quality and quantity from a foreign country?

Mr. ROTH. Under the bill now, it would mandate, it would require Commerce to consider future foreign availability. As the amendment reads, it gives the President that discretion. That is the difference.

Mr. BERMAN. It would require what?

Mr. ROTH. Future foreign availability.

Mr. BERMAN. What do you mean? How could you require future foreign availability?

Mr. ROTH. It gives him the consideration. It gives him that leeway.

Chairman GILMAN. The question—

Mr. BERMAN. I just want to get the answer to this one narrow question.

And let me come back here, and let me ask Mr. Reinsch: Does the Administration, in the underlying text, have the discretion—yes, there is foreign availability or there will be foreign availability, we are still going to refuse to de-control this item?

Mr. REINSCH. If I may, Mr. Berman, I think you are talking about two slightly different things.

The answer to that question is yes.

Mr. Roth's amendment is not about that question. Mr. Roth's amendment is really about the universe of things you can ask to have de-controlled.

And one of the things that the bill without the amendment, would have permitted is for us to make a decision to de-control on the basis of prospective foreign availability in the near term.

What Mr. Roth's amendment would do is to strike the language permitting that kind of determination and leave it up to the Secretaries of Commerce and Defense to decide in a subsequent reg as to whether that would be within the universe of things for which de-control applies.

Mr. BERMAN. All right. So all this is about is whether or not some manufacturer can raise with the Federal Government that the product I make is going to be available very soon from a variety of sources, and would you consider de-controlling this item so I can send it to Country X?

Mr. REINSCH. It is about whether a manufacturer could raise it or whether we could initiate that on our own.

But I do want to say that while the text of the bill would specify that the manufacturer has a right to come in on a future foreign availability issue, Mr. Roth's amendment does not necessarily preclude that. It leaves it up to a subsequent regulation to

be written by the Secretary of Commerce with the concurrence of the Secretary of Defense.

Mr. BERMAN. All right. Then my final question—and then I will give back the time that you so graciously allotted to me—is: Why, Mr. Roth, do not you want to guarantee that the manufacturer has a right to bring it before the Federal Government, so long as the Federal Government has unfettered discretion to decide what to do once it gets that petition?

Why do you want to limit the manufacturer from bringing the issue to the government?

Mr. ROTH. It does not prevent the manufacturer from doing that at all.

Mr. BERMAN. We just heard that it does.

Mr. ROTH. All it does is it allows the President to define that and define the process.

And I move the amendment.

Mr. BERMAN. I think the correct answer we have already heard, that this is an arbitrary limitation on the right to bring an issue to the Federal Government.

Chairman GILMAN. The gentleman's time has expired.

The question now is now on the amendment offered by Mr. Roth.

As many as are in favor of the amendment signify in the usual manner.

As many as are opposed.

The ayes appear to have it. The ayes have it. The amendment is agreed to.

Mr. GEJDENSON. Roll call, Mr. Chairman.

Chairman GILMAN. A roll call has been requested.

Is there a sufficient second?

There is a sufficient second. A roll call vote is ordered. The clerk will call the roll.

Ms. BLOOMER. Mr. Gilman?

Chairman GILMAN. Aye.

Ms. BLOOMER. Mr. Gilman votes yes.

Mr. Goodling?

[No response.]

Ms. BLOOMER. Mr. Leach?

Mr. LEACH. Aye.

Ms. BLOOMER. Mr. Leach votes yes.

Mr. Roth?

Mr. ROTH. Aye.

Ms. BLOOMER. Mr. Roth votes yes.

Ms. BLOOMER. Mr. Hyde?

[No response.]

Ms. BLOOMER. Mr. Bereuter?

Mr. BEREUTER. Aye.

Ms. BLOOMER. Mr. Bereuter votes yes.

Mr. Smith?

Mr. SMITH. Aye.

Ms. BLOOMER. Mr. Smith votes yes.

Mr. Burton?

[No response.]

Ms. BLOOMER. Mrs. Meyers?

Mrs. MEYERS. Aye.

Ms. BLOOMER. Mrs. Meyers votes yes.
 Mr. Gallegly?
 Mr. GALLEGLY. Aye.
 Ms. BLOOMER. Mr. Gallegly votes yes.
 Ms. Ros-Lehtinen?
 [No response.]
 Ms. BLOOMER. Mr. Ballenger?
 Mr. BALLENGER. Aye.
 Ms. BLOOMER. Mr. Ballenger votes yes.
 Mr. Rohrabacher?
 Mr. ROHRABACHER. Aye.
 Ms. BLOOMER. Mr. Rohrabacher votes yes.
 Mr. Manzullo?
 Mr. MANZULLO. Aye.
 Ms. BLOOMER. Mr. Manzullo votes yes.
 Mr. Royce?
 [No response.]
 Ms. BLOOMER. Mr. King?
 Mr. KING. Aye.
 Ms. BLOOMER. Mr. King votes yes.
 Mr. Kim?
 Mr. KIM. Aye.
 Ms. BLOOMER. Mr. Kim votes yes.
 Mr. Brownback?
 [No response.]
 Ms. BLOOMER. Mr. Funderburk?
 Mr. FUNDERBURK. Aye.
 Ms. BLOOMER. Mr. Funderburk votes yes.
 Mr. Chabot?
 Mr. CHABOT. Aye.
 Ms. BLOOMER. Mr. Chabot votes yes.
 Mr. Sanford?
 Mr. SANFORD. Aye.
 Ms. BLOOMER. Mr. Sanford votes yes.
 Mr. Salmon?
 Mr. SALMON. Aye.
 Ms. BLOOMER. Mr. Salmon votes yes.
 Mr. Houghton?
 Mr. HOUGHTON. No.
 Ms. BLOOMER. Mr. Houghton votes no.
 Mr. Campbell?
 Mr. CAMPBELL. Aye.
 Ms. BLOOMER. Mr. Campbell votes yes.
 Mr. Hamilton?
 Mr. HAMILTON. No.
 Ms. BLOOMER. Mr. Hamilton votes no.
 Mr. Gejdenson?
 Mr. GEJDENSON. No.
 Ms. BLOOMER. Mr. Gejdenson votes no.
 Mr. Lantos?
 [No response.]
 Ms. BLOOMER. Mr. Torricelli?
 [No response.]
 Ms. BLOOMER. Mr. Berman?

Mr. BERMAN. No.
 Ms. BLOOMER. Mr. Berman votes no.
 Mr. Ackerman?
 Mr. ACKERMAN. No.
 Ms. BLOOMER. Mr. Ackerman votes no.
 Mr. Johnston?
 Mr. JOHNSTON. No.
 Ms. BLOOMER. Mr. Johnston votes no.
 Mr. Engel?
 [No response.]
 Ms. BLOOMER. Mr. Faleomavaega?
 [No response.]
 Ms. BLOOMER. Mr. Martinez?
 Mr. MARTINEZ. No.
 Ms. BLOOMER. Mr. Martinez votes no.
 Mr. Payne?
 Mr. PAYNE. No.
 Ms. BLOOMER. Mr. Payne votes no.
 Mr. Andrews?
 [No response.]
 Ms. BLOOMER. Mr. Menendez?
 Mr. MENENDEZ. No.
 Ms. BLOOMER. Mr. Menendez votes no.
 Mr. Brown?
 Mr. BROWN. No.
 Ms. BLOOMER. Mr. Brown votes no.
 Ms. McKinney?
 Ms. MCKINNEY. No.
 Ms. BLOOMER. Ms. McKinney votes no.
 Mr. Hastings?
 Mr. HASTINGS. No.
 Ms. BLOOMER. Mr. Hastings votes no.
 Mr. Wynn?
 Mr. WYNN. No.
 Ms. BLOOMER. Mr. Wynn votes no.
 Mr. Moran?
 Mr. MORAN. No.
 Ms. BLOOMER. Mr. Moran votes no.
 Mr. Frazer?
 [No response.]
 Ms. BLOOMER. Mr. Rose?
 [No response.]
 Ms. BLOOMER. Ms. Danner?
 Ms. DANNER. No.
 Ms. BLOOMER. Ms. Danner votes no.
 Chairman GILMAN. The clerk will call the absentees.
 Ms. BLOOMER. Mr. Goodling?
 [No response.]
 Ms. BLOOMER. Mr. Hyde?
 [No response.]
 Ms. BLOOMER. Mr. Burton?
 [No response.]
 Ms. BLOOMER. Ms. Ros-Lehtinen?
 [No response.]

Ms. BLOOMER. Mr. Royce?

Mr. ROYCE. Aye.

Ms. BLOOMER. Mr. Royce votes yes.

Mr. Brownback?

Mr. BROWNBACK. Aye.

Ms. BLOOMER. Mr. Brownback votes yes.

Mr. Lantos?

Mr. LANTOS. No.

Ms. BLOOMER. Mr. Lantos votes no.

Mr. Torricelli?

[No response.]

Ms. BLOOMER. Mr. Engel?

[No response.]

Ms. BLOOMER. Mr. Faleomavaega?

[No response.]

Ms. BLOOMER. Mr. Andrews?

[No response.]

Ms. BLOOMER. Mr. Frazer?

[No response.]

Ms. BLOOMER. Mr. Rose?

[No response.]

Chairman GILMAN. The clerk will report the vote.

Ms. BLOOMER. On this vote, there were 19 ayes and 16 noes.

Chairman GILMAN. The amendment is agreed to.

Mr. GEJDENSON. Mr. Chairman.

Chairman GILMAN. Mr. Gejdenson.

Mr. GEJDENSON. I have an amendment at the desk for import sanctions for the violation of nuclear non-proliferation.

Chairman GILMAN. The clerk will distribute the amendment.

The clerk will read the amendment.

Ms. BLOOMER. Amendment to the amendment in the nature of a substitute to H.R. 361 offered by Mr. Gejdenson.

Mr. GEJDENSON. Mr. Chairman, I move the amendment be considered as read.

Chairman GILMAN. Without objection, the amendment will be considered as having been read and is open for discussion.

[The amendment to H.R. 361, offered by Mr. Gejdenson, appears in the appendix.]

Are there any members wishing to speak to the amendment?

Mr. GEJDENSON. Mr. Chairman.

Chairman GILMAN. Mr. Gejdenson.

Mr. GEJDENSON. Yes, Mr. Chairman. I would like to thank you, Chairman Gilman, and Chairman Roth, Mr. Brownback, and Mrs. Meyers for their cooperative effort in working out language that will move this amendment forward.

It would simply add to the list of sanctions when nuclear non-proliferation legislation is violated, import sanctions would apply when a foreign country gives nuclear explosive devices to a non-nuclear state or is a non-nuclear state and receives such a device. It would impose import sanctions on that country. The legislation already cuts off U.S. exports and export financing.

The whole burden in that case falls on American manufacturers. This would actually give us some leverage on their markets and

have an impact on their economy rather than just on ours, and I think the agreement is one that makes a lot of sense.

I would like to yield to Mr. Hamilton.

Mr. HAMILTON. Mr. Gejdenson, I support your amendment. I commend you and your colleagues for bringing it forward.

I urge its adoption.

Chairman GILMAN. Mr. Brownback.

Mr. BROWNBACK. Thank you, Mr. Chairman.

I want to commend you and Chairman Roth for the hard work in putting together this excellent bill. It is a substantial reform, the first in 17 years. And I also commend Mr. Gejdenson for his work on this amendment.

In its current form, this amendment is an excellent addition to the Nuclear Proliferation Prevention Act of 1994. That act contains many appropriate sanctions for countries that contribute to the proliferation of nuclear weapons.

The Gejdenson amendment would add an important sanction to the 1994 act. This provision would prohibit imports to the United States from the specific entities responsible for or most closely identified with nuclear proliferation activities. The specificity of this amendment is important because we need to punish the bad guys, not impose a blanket ban on imports from a sanctioned country.

Mr. Chairman, we must crack down on countries that transfer nuclear technology and components as well as countries that actively seek to develop a nuclear weapons program.

This amendment is an important step toward preventing the proliferation of nuclear weapons, an indication of our willingness to punish those responsible for proliferation.

I commend the gentleman from Connecticut for introducing this amendment, and I urge my colleagues to support it.

Chairman GILMAN. Is there anyone on this side requesting permission to speak?

Mr. Roth.

Mr. ROTH. Mr. Chairman, let me just say that this amendment adds imports to our nuclear sanctions list. Such sanctions are already part of the current law for both chemical weapons and long-range missiles. But the fact is that imports offer a better way to hit our target rather than hitting our own exporters.

I commend the change made in this amendment. I think this is a good amendment and that it mandates that the import sanctions be targeted on the parties most responsible.

So I support this amendment, and I urge bipartisan adoption.

Chairman GILMAN. Thank you, Mr. Roth.

Mrs. Meyers.

Mrs. MEYERS. Mr. Chairman, I am glad we were able to reach an agreement on this amendment allowing import sanctions to be imposed upon countries that engage in nuclear proliferation. It puts a real deterrent to this activity in the hands of the President.

It makes it much more likely that we will be able to threaten a sanction that will actually hurt the offending country more than it does us.

It was argued last week that the amendment then offered was too broad and too Draconian. However, I am afraid that this cur-

rent language may be too narrow. It restricts the import sanctions to the entities responsible for or more closely identified with the illegal proliferation.

There will be situations where it would be most effective to target imports that may not be from the entity that engaged in the proliferation but would cause the foreign country much more pain if cut off. And I think it is the country—we have to get the attention of the country, just not one company that manufactures nuclear components that does not send anything to us anyway.

We must remember that any trade sanction we impose will cause some hardship to Americans since, after all, no trade occurs without mutual benefit.

We should allow the Administration enough flexibility to pick an appropriate trade sanction that causes more pain to the offending country than it does to American citizens.

I hope we can further modify this provision as this bill moves through the legislative process.

Chairman GILMAN. Are there any other members seeking recognition with regard to the amendment?

If not, the question—

Mr. ROHRBACHER. Point of information?

Chairman GILMAN. Mr. Rohrabacher.

Mr. ROHRBACHER. Will this bill—if the Chinese are sending components to people in other countries that will permit them to produce nuclear weapons, will this cut off trade with—or importation from China?

Chairman GILMAN. Mr. Gejdenson.

Mr. GEJDENSON. Well, it would not cut off trade. Although, for some of the things the Chinese have done, it would simply give the President one more category to respond to on top of the present export sanctions, which frankly only put economic pain on this country, since much of what we sell the Chinese and others is available worldwide and they simply just get it from another country.

This would add to that list a product coming to this country, and its priorities would be to first come from a company most closely with the exporter in China. Obviously, that gives you a lot of broad reach because you could target it broadly since most of these companies are controlled by the government.

Mr. ROHRBACHER. Why was not it—why are not we holding the country responsible if they are exporting nuclear materials?

Mr. GEJDENSON. Well, I would be very happy to make it much stronger. We are trying to get this through in a bipartisan manner. This is something that we have gotten to the chairman of the subcommittee and the full committee to agree to.

It takes a step in the right direction.

Mr. ROHRBACHER. I will be supporting the amendment, but I am sorry that we have not gone far enough to give the message to the Chinese that they should not be engaged in giving dictatorships around the world or any other governments around the world nuclear weapons capabilities.

Thank you.

Chairman GILMAN. Thank you, Mr. Rohrabacher.

Mrs. Meyers.

Mrs. MEYERS. I would agree with the comments made by Mr. Rohrabacher.

I do think that what we have done is to restrict these import sanctions to the entity involved so that if we have a company who is manufacturing nuclear components and proliferating with them, we are saying to that company, we will not accept your imports.

Well, they probably do not send anything to us anyway.

And what does it mean when we say "similar entities"? Other companies that manufacture nuclear components?

I am not going to vote against this bill because of this, but I think we had an opportunity to do something really important; and the amendment, as it stands, is so weak that it is not going to accomplish anything.

Mr. ROTH. Would Mrs. Meyers yield for just 30 seconds?

Mrs. MEYERS. Sure.

Mr. ROTH. I thank you for yielding. I think that you and Mr. Rohrabacher have raised some points you feel very strongly about, and with Mr. Gejdenson's permission, the author of this amendment, I suggest we sit down with you when the report language is written and reflect those opinions.

Chairman GILMAN. Thank you, Mr. Roth.

Are there any other members seeking recognition on the amendment?

If not, the question is now on the amendment. As many as are in favor of the motion, say aye.

As many as are opposed, indicate in the usual manner.

The ayes appear to have it. The ayes have it. The amendment is agreed to.

Chairman GILMAN. The Chair would now like to take this opportunity to propound an amendment.

The clerk will read the amendment.

Ms. BLOOMER. En bloc amendment to the amendment in the nature of a substitute to H.R. 361, offered by Chairman Gilman.

In section—

Chairman GILMAN. Without objection, the amendment will be considered as having been read.

[The en bloc amendment to H.R. 361, offered by Mr. Gilman, appears in the appendix.]

Chairman GILMAN. Adoption of this amendment will help to strengthen provisions already in this bill providing greater scrutiny and monitoring to the billions of dollars of dual-use equipment and technology licensed annually for export from our nation to the People's Republic of China.

As China continues its military buildup and modernization of its armed forces, we must ensure that our dual-use exports to that nation are not put to use for these purposes by state or PLA-run companies.

The provisions in this bill already ensure that the Department of Commerce will have an export control attache stationed in China to ensure that a program of pre-licensed checks and post-shipment verifications can be implemented.

In addition, there is a new and much-needed authority in the bill for temporary denial orders where the Department of Commerce finds that there is a reasonable cause to believe that a company

might be engaged in violations of the conditions of their export license.

Adoption of this amendment directs the Secretary to make certain that adequate resources are available to support a representative or representatives of the Department of Commerce who will monitor the use of sensitive items for military end use or users in China.

It also directs that appropriate coordination take place between our officials in Beijing and Hong Kong in an effort to make certain that sensitive items exported to Hong Kong are not diverted to military end users in China.

The adoption of this measure will also make certain that the Department of Commerce will specifically take into account, in the licensing process, any other investigations of diversions from authorized end uses or users, including any actions by the Committee on Foreign Investment in the United States, the so-called CEPHIAS Committee.

In the past, licensing decisions regarding some questionable end users in China, Department of Commerce officials have not paid sufficient attention to some adverse CEPHIAS findings concerning Chinese companies bent on the acquisition of military technologies.

And, finally, the amendment provides the Department of Commerce with the specific authority and statutory mandate needed to deny licensing approvals from all U.S. companies to companies of concern in China and elsewhere that.

It begins to address some of the concerns raised by the critics of the Department in regard to the improper diversion of licensed machine tools to the China National Aero-Technology Import and Export Cooperation by the McDonnell-Douglas Corporation.

Mr. Hamilton.

Mr. HAMILTON. Mr. Chairman, I commend you for putting this amendment forward. I certainly intend to support it. It raises an issue of very great importance with respect to our non-proliferation policies, and the provision in your amendment makes sense to me.

My sense is that the government is already doing some of these things, but it probably is going to be helpful to put them into the statute.

I have some concern about singling out China, as you do. That causes some problems, but overall it is a good amendment, and I commend you for it, and I support it.

Chairman GILMAN. I thank Mr. Hamilton for his supporting comments.

Mr. Roth.

Mr. ROTH. Thank you, Mr. Chairman.

Mr. Chairman, you have correctly long been watchful that high-tech exports to China be conducted safely, and I think you have an excellent amendment here, reflecting good insight. No issue is more important than preventing diversion.

We want to facilitate safe exports, and we want to crack down on persons who divert high technology to dangerous purposes, especially in cases like China. Your changes are, I think, the right approach.

We ensure that the Secretary has the tools and the resources that he needs. And this could be especially helpful when Hong Kong becomes part of China.

So, Mr. Chairman, I think your amendment strengthens this bill, and I hope my colleagues will support it.

Chairman GILMAN. Thank you, Mr. Roth, for your supporting comments.

Any other comments?

Mr. BEREUTER. Mr. Chairman.

Chairman GILMAN. Mr. Bereuter.

Mr. BEREUTER. Mr. Chairman, I support your initiative. I had expected to add a couple words of language on line 12 which relates to the special customs territory of Hong Kong to make it consistent with the Hong Kong Relations Act of 1992 and assure that what we are doing survives after the transition in July 1997.

There is some question among staff if in fact we have the right language, and so I would forego doing that now but hope that by the time we come to the floor you might be able to add language to assure that, in fact, this survives the 1997 transition.

Chairman GILMAN. I thank the gentleman for his suggestion. We will be pleased to work with the staff with regard to that proposal.

Are any other members seeking recognition?

If not, the question is on the amendment. As many as are in favor, signify in the usual manner.

As many as are opposed to the amendment, indicate in the usual manner.

The ayes appear to have it. The ayes have it. The amendment is agreed to.

Mr. Campbell.

Mr. CAMPBELL. Mr. Chairman, I would like to engage in a colloquy. In a moment, I have an amendment. But if I might, with the Chair's permission, engage in a colloquy with the subcommittee Chairman.

Chairman GILMAN. Mr. Roth—

Mr. CAMPBELL. Mr. Roth.

Chairman GILMAN [continuing]. And Mr.—

Mr. CAMPBELL. And Mr. Bereuter if he wishes.

Chairman GILMAN. Without objection.

Mr. CAMPBELL. Thank you.

Mr. Chairman, the subject of the colloquy is an issue of great importance to the future of our information technology industry, computers, telecommunications, and software. The issue is the cumbersome export licensing system for encryption products.

Let me make it clear, I am not suggesting de-control of encryption. Rather, I raise the problems that many U.S. companies confront in obtaining timely decisions on applications for licenses of products that are exportable.

With the exponential growth of network computers and the ever-expanding use of the Internet for information processing and communication, it is more important than ever that the licensing system be streamlined so American companies are given timely decisions that allow them to compete in providing data security products to their customers.

I also recognize that we must protect certain law enforcement and intelligence capabilities.

My understanding is that the chairman of the subcommittee and Mr. Bereuter have been working on this issue, and I would now like to ask for their assurance that work on this issue is progressing and that the subcommittee will continue to exercise vigorous oversight to ensure that the Executive Branch fixes these licensing problems.

And I would be pleased to yield to Mr. Roth.

Mr. ROTH. Thank you, Mr. Campbell.

Let me respond by saying that I thank Mr. Campbell for raising this issue. I think it is brilliant insight, and let me say that we are not engaged in an Alfonse-Gaston performance.

But I want to say that I agree with him that the licensing system is much too cumbersome and that this problem was first uncovered last year in one of our subcommittee hearings. And as a result of that hearing, we have been working with the executive branch to reform the licensing for encryption.

We intend to correct the problems that Mr. Campbell has described here, because I think it is extremely important that we focus on that.

I can assure you, Mr. Campbell, that work is under way in the executive branch to reform the process. Moreover, I can assure you that the subcommittee will continue to exercise vigorous oversight to make sure that the reforms that you seek are made.

Finally, let me commend you for the judicious way that you have raised this issue. I think it is really the right way of doing it.

As you know, this is a very sensitive area with the important national security aspects which must remain highly classified.

And, in short, let me say you are right on target, and I appreciate your comments.

Mr. CAMPBELL. I would yield to Chairman Bereuter.

Mr. BEREUTER. I thank Mr. Campbell for yielding.

You have raised an issue that has been a concern of the subcommittee and the full committee for some time. We are glad to have your additional concern expressed today.

Last year in subcommittee responses to questions that I asked, it was asserted that problems exist in processing export licenses for certain encryption products.

Evidently, even when encryption products are legally exportable, there are often significant delays, sometimes for months, in processing necessary licenses.

It seems to me that the licensing system can be streamlined without jeopardizing the national security interest and closely examining proposed encryption exports.

In fact, it is my understanding that the problems are caused mainly by bureaucratic procedures that are unrelated to determining national security interests. These are changes that the executive branch should make without waiting for legislation. We have made the congressional intent clear: Improvement should be made.

As a result of our subcommittee's initiatives, the executive branch is said to be working to improve the licensing system, and I believe that is the case.

Let me also say, as a former member of the Intelligence Committee that we have to move with great caution in this area. I know the gentleman from California shares that concern in this regard, and I appreciate the way that he has approached this issue this morning.

As Mr. Roth has indicated just a minute ago, the subcommittee will aggressively pursue our oversight role in this respect. I am absolutely concerned, under our Chairman's leadership, and I will work with the gentleman from California and Mr. Roth in any way that I can to make sure that the improvements are initiated that can be warranted.

Thank you.

Mr. CAMPBELL. I thank both gentlemen.

Mr. GEJDENSON. Mr. Chairman.

Chairman GILMAN. Mr. Gejdenson.

Mr. GEJDENSON. Yes, Mr. Chairman, I just want to add one thing to this. We need to look at not just hardware, but we have to look at software. With everybody's discussion of the Internet, software that is generally available in shopping malls throughout the United States can easily be sent globally over the Internet, over long distant phone lines via modems. It is time that we move rapidly on the issue of encryption.

Many of us on this committee are co-sponsors of Mr. Goodlatte's H.R. 3011, Mr. Manzullo, Mr. Chabot, Mr. Funderburk, Mr. Engel, and others.

You know, it is almost as if we are stuck back in the clipper chip debate. You know, we spent a couple of years dancing on clipper chip, one of the silliest ideas I had heard of in a long time. And I think, to some degree, we are still stuck there.

We have to address the realities, the needs of the world, and move forward.

Chairman GILMAN. Thank you, Mr. Gejdenson.

Mr. Campbell.

Mr. CAMPBELL. Mr. Chairman, I have an amendment at the desk.

Chairman GILMAN. The clerk will distribute the amendment.

The clerk will read the amendment.

Ms. BLOOMER. Amendment to the amendment in the nature of a substitute to H.R. 361, offered by Mr. Campbell.

Add the following at the end of section—

Chairman GILMAN. The amendment is considered as having been read. The amendment is now open for discussion.

[The amendment to H.R. 361, offered by Mr. Campbell, appears in the appendix.]

Mr. Campbell.

Mr. CAMPBELL. Thank you, Mr. Chairman.

To my friends with whom I have discussed this issue in advance, let me say that I have decided not to offer the more controversial amendment. I am offering the less controversial amendment. Hopefully that will ensure its passage and save for another day the other issue.

In general, though, for those who I have not spoken to before, this deals with the private right of action which is created in this

bill for the first time by a person aggrieved by a violation of the anti-boycott provisions.

Under existing laws, such a person is subject to criminal sanctions. And what this bill does is to create a private right of action, for the first time. I am always concerned about creating a new private right of action because of my concern about proliferation of litigation, lawsuits, in this country.

But I am most concerned that if we ever do expand and create new causes of action that at the very least, we bear in mind that sometimes these are used as a way of beating up defendants into a settlement and that the way to prevent that from happening is to give to the trial judge the authority to assure that attorney's fees be paid by the losing party on behalf of the winning party.

I leave it in the judge's discretion in this amendment. As you can see, the court makes the determination. But I do think we should put this in explicitly; because if we do not have this in explicitly, the governing rule in America is that there is no shift of attorney's fees; and so I could probably threaten any of a number of companies into a large settlement, whether or not there is merit in the lawsuit.

So that is what this amendment is, Mr. Chairman. As I said, it is I believe, far less controversial than what I might otherwise have proposed as a way of dealing with the private right of action, which is still of concern to me.

Mr. HAMILTON. Would the gentleman yield?

Mr. CAMPBELL. I would be pleased to yield to the ranking member.

Mr. HAMILTON. I commend you for putting the amendment forward. I certainly intend to support it. The change, I think, fairly distributes the legal costs and probably helps prevent frivolous lawsuits.

It is a worthy amendment, and I urge its adoption.

Chairman GILMAN. Thank you, Mr. Hamilton.

I want to commend the gentleman for his amendment.

Is there any discussion on the amendment?

If there is no further discussion on the amendment, as many as are in favor of the amendment, signify in the usual manner.

Those opposed, the usual manner.

The ayes appear to have it. The ayes have it. The amendment is agreed to.

Chairman GILMAN. If there are no further amendments, the Vice Chairman of the committee, the gentleman from Nebraska, Mr. Bereuter, is recognized to offer two motions, the first of which, I believe we will be able to handle by voice vote.

Mr. BEREUTER. Mr. Chairman, I move that the Chairman be authorized to offer motions under clause 1 of Rule 20 relative to the conference in connection with the consideration of this bill or any Senate counterpart.

Chairman GILMAN. All in favor of the motion, signify in the usual manner.

Opposed.

Without objection, the motion is agreed to.

Mr. Bereuter is recognized to offer his second motion.

Mr. BEREUTER. Mr. Chairman, I move that the committee report H.R. 361 to the House with the recommendation that the bill as amended do pass.

Chairman GILMAN. The question is on the motion. As many as are in favor, signify in the usual manner.

Opposed?

The ayes appear to have it. The ayes have it. The motion is agreed to.

Without objection, the staff is authorized to make technical, grammatical, and conforming amendments to the bill just considered.

I appreciate the cooperation of the members and the staff.

The Chair notes that a quorum is present.

The committee stands adjourned.

[Whereupon, at 11:22 a.m., the committee was adjourned, subject to the call of the chair.]

APPENDIX I

AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 361 AS ADOPTED BY THE SUBCOMMITTEE ON INTERNATIONAL ECONOMIC POLICY AND TRADE

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the "Omnibus Export Ad-
3 ministration Act of 1996".

4 SEC. 2. TABLE OF CONTENTS.

5 The table of contents of this Act is as follows:

Sec. 1. Short title.

Sec. 2. Table of contents.

TITLE I—EXPORT ADMINISTRATION

Sec. 101. Short title.

Sec. 102. Findings.

Sec. 103. Policy statement.

Sec. 104. General provisions.

Sec. 105. Multilateral controls.

Sec. 106. Emergency controls.

Sec. 107. Short supply controls.

Sec. 108. Foreign boycotts.

Sec. 109. Procedures for processing export license applications; other inquiries.

Sec. 110. Violations.

Sec. 111. Controlling proliferation activity.

Sec. 112. Administrative and judicial review.

Sec. 113. Enforcement.

Sec. 114. Export control authorities and procedures.

Sec. 115. Annual report.

Sec. 116. Definitions.

Sec. 117. Effects on other Acts.

Sec. 118. Secondary Arab boycott.

Sec. 119. Conforming amendments to other laws.

Sec. 120. Expiration date.

Sec. 121. Savings provision.

TITLE II—NUCLEAR PROLIFERATION PREVENTION

Sec. 201. Repeal of termination of provision of the Nuclear Proliferation Prevention Act of 1994.

Sec. 202. Seeking multilateral support for unilateral sanctions.

TITLE I—EXPORT ADMINISTRATION

SEC. 101. SHORT TITLE.

This title may be cited as the “Export Act of 1996”.

SEC. 102. FINDINGS.

The Congress makes the following findings:

(1) Export controls are a part of a comprehensive response to national security threats. United States exports should be restricted only for significant national security, nonproliferation, and foreign policy reasons.

(2) Exports of certain commodities and technology may adversely affect the national security and foreign policy of the United States by making a significant contribution to the military potential of individual countries or by disseminating the capability to design, develop, test, produce, stockpile, or use weapons of mass destruction, missile delivery systems, and other significant military capabilities. Therefore, the administration of export controls should emphasize the control of these exports.

(3) The acquisition of sensitive commodities and technology by those countries and end users whose actions or policies run counter to United

1 States national security or foreign policy interests
2 may enhance the military capabilities of those coun-
3 tries, particularly their ability to design, develop,
4 test, produce, stockpile, use, and deliver nuclear,
5 chemical, and biological weapons, missile delivery
6 systems, and other significant military capabilities.
7 This enhancement threatens the security of the
8 United States and its allies, and places additional
9 demands on the defense budget of the United States.
10 Availability to countries and end users of items that
11 contribute to military capabilities or the proliferation
12 of weapons of mass destruction is a fundamental
13 concern of the United States and should be elimi-
14 nated through negotiations and other appropriate
15 means whenever possible.

16 (4) With the growing importance of exports to
17 sustained United States economic growth and vital-
18 ity, restrictions on exports must be evaluated in
19 terms of their effects on the United States economy.

20 (5) Export controls cannot be the sole instru-
21 ment of the United States to prevent a country or
22 end user from developing weapons of mass destruc-
23 tion. For this reason, export controls should be ap-
24 plied as part of a comprehensive response to security
25 threats.

1 (6) The national security of the United States
2 depends not only on wise foreign policies and a
3 strong defense, but also a vibrant national economy.
4 To be truly effective, export controls should be ap-
5 plied uniformly by all suppliers.

6 (7) International treaties, such as the Chemical
7 Weapons Convention, and international agreements
8 and arrangements intended to control, lessen, or
9 eliminate weapons of mass destruction should be
10 fully implemented by, among other things, imposing
11 restrictions on imports and exports of designated
12 items, establishing, monitoring, and transmitting re-
13 ports on the production, processing, consumption,
14 export, and import of designated items, and comply-
15 ing with verification regimes mandated by such trea-
16 ties, agreements, and arrangements.

17 (8) Except in the event the United States is the
18 sole source of critical supplies, unilateral export con-
19 trols are generally not truly effective in influencing
20 the behavior of other governments or impeding ac-
21 cess to controlled items. Unilateral controls alone
22 may impede access to United States sources of sup-
23 ply without affecting the ability of countries to ob-
24 tain controlled items elsewhere. Moreover, unilateral
25 controls generally permit foreign competitors to

1 serve markets the United States Government denies
2 to United States firms and workers, thus impairing
3 the reliability of United States suppliers in compari-
4 son with their foreign competitors. At the same
5 time, the need to lead the international community
6 or overriding national security or foreign policy in-
7 terests may justify unilateral controls in specific
8 cases.

9 (9) The United States recognizes the impor-
10 tance of comprehensive enforcement measures to
11 maximize the effectiveness of multilateral controls.

12 (10) The United States export control system
13 must not be overly restrictive or bureaucratic, or un-
14 dermine the competitive position of American indus-
15 try. The export control system must be efficient, re-
16 sponsive, transparent, and effective.

17 (11) Export restrictions that negatively affect
18 the United States industrial base may ultimately
19 weaken United States military capabilities and lead
20 to dependencies on foreign sources for key compo-
21 nents.

22 (12) Minimization of restrictions on exports of
23 agricultural commodities and products is of critical
24 importance to the maintenance of a sound agricul-
25 tural sector, to a positive contribution to the balance

1 of payments, to reducing the level of Federal ex-
2 penditures for agricultural support programs, and to
3 United States cooperation in efforts to eliminate
4 malnutrition and world hunger.

5 (13) Minimization of restrictions on the export
6 of information technology products and services is of
7 critical importance to United States leadership in re-
8 moving obstacles to the effective development of a
9 superior global information infrastructure and the
10 new jobs and markets, increased trade and informa-
11 tion flows, improved national security, and new tools
12 for the improvement of the quality of life for people
13 globally that will be created.

14 (14) The United States should play a leading
15 role in promoting transparency and responsibility
16 with regard to the transfers of conventional arma-
17 ments and sensitive dual-use goods and technologies.

18 **SEC. 103. POLICY STATEMENT.**

19 It is the policy of the United States to do the follow-
20 ing:

21 (1) To stem the proliferation of weapons of
22 mass destruction, and the means to deliver them,
23 and other significant military capabilities by—

24 (A) leading international efforts to control
25 the proliferation of chemical and biological

1 weapons, nuclear explosive devices, missile deliv-
2 ery systems, and other significant military ca-
3 pabilities;

4 (B) controlling involvement of United
5 States persons in, and contributions by United
6 States persons to, foreign programs intended to
7 develop weapons of mass destruction, missiles,
8 and other significant military capabilities, and
9 the means to design, test, develop, produce,
10 stockpile, or use them; and

11 (C) implementing international treaties or
12 other agreements or arrangements concerning
13 controls on exports of designated items, reports
14 on the production, processing, consumption,
15 and exports and imports of such items, and
16 compliance with verification programs.

17 (2) To restrict the export of items—

18 (A) that would significantly contribute to
19 the military potential of countries so as to prove
20 detrimental to the national security of the Unit-
21 ed States or its allies; or

22 (B) where necessary to further signifi-
23 cantly the foreign policy of the United States or
24 to fulfill its declared international commit-
25 ments.

1 (3) To—

2 (A) minimize uncertainties in export con-
3 trol policy; and

4 (B) encourage trade with all countries with
5 which the United States has diplomatic or trad-
6 ing relations, except those countries with which
7 such trade has been determined by the Presi-
8 dent to be against the national interest.

9 (4) To restrict export trade when necessary to
10 protect the domestic economy from the excessive
11 drain of scarce materials and to reduce the serious
12 inflationary impact of foreign demand.

13 (5) To further increase the reliance of the Unit-
14 ed States upon multilateral coordination of controls
15 through effective control regimes that maintain lists
16 of controlled items that are truly critical to the con-
17 trol objectives, strive to increase membership to in-
18 clude all relevant countries, maintain common cri-
19 teria and procedures for licensing, and harmonize
20 member countries' licensing practices. It is the pol-
21 icy of the United States that multilateral controls
22 are the best means of achieving the control objec-
23 tives of the United States.

24 (6) To impose unilateral controls only when it
25 is necessary to further significantly the national se-

1 curity or foreign policy of the United States, and
2 only after full consideration of the economic impact
3 of the controls and their effectiveness in achieving
4 their intended objectives.

5 (7) To make all licensing determinations in a
6 timely manner so undue delays in the licensing proc-
7 ess will not cause a United States person to lose an
8 export sale.

9 (8) To use export controls to deter and punish
10 acts of international terrorism and to encourage
11 other countries to take immediate steps to prevent
12 the use of their territories or resources to aid, en-
13 courage, or give sanctuary to those persons involved
14 in directing, supporting, or participating in acts of
15 international terrorism. To this end, consistent with
16 the policies of this section and the provisions of this
17 title, the United States should distance itself from
18 countries that have violated international norms of
19 behavior by repeatedly supporting acts of inter-
20 national terrorism, by restricting exports to those
21 countries.

22 (9)(A) To counteract restrictive trade practices
23 or boycotts fostered or imposed by foreign countries
24 against other countries friendly to the United States
25 or against any United States person.

1 (B) To encourage and, in specified cases, re-
2 quire United States persons engaged in the export of
3 commodities, technology, and other information to
4 refuse to take actions, including furnishing informa-
5 tion or entering into or implementing agreements,
6 which have the effect of furthering or supporting the
7 restrictive trade practices or boycotts fostered or im-
8 posed by any foreign country against a country
9 friendly to the United States or against any United
10 States person.

11 (10) To streamline export control functions and
12 increase administrative accountability, and thereby
13 better serve the exporting public by reducing and
14 eliminating overlapping, conflicting, and inconsistent
15 regulatory burdens.

16 (11) To minimize restrictions on the export of
17 agricultural commodities and products.

18 (12) To minimize restrictions on the export of
19 information technology products and services as part
20 of a flexible regulatory environment that can keep
21 pace with the rapid technological changes necessary
22 to realize the full economic, societal, and national se-
23 curity benefits of United States leadership in the de-
24 velopment of a superior global information infra-
25 structure.

1 (13) To cooperate with other countries to pro-
2 mote greater transparency and responsibility with
3 regard to the transfers of armaments and sensitive
4 goods and technologies, both for the purpose of de-
5 veloping common understandings of the risks to
6 international peace and regional security associated
7 with the transfers of such items and to coordinate
8 national control policies to combat those risks.

9 (14) To enhance the national security and non-
10 proliferation interests of the United States. To this
11 end and consistent with the other policies of this sec-
12 tion and the provisions of this title, the United
13 States will use export controls when necessary to en-
14 sure that access to weapons of mass destruction,
15 missile delivery systems, and other significant mili-
16 tary capabilities is restricted. While the multilateral
17 nonproliferation regimes will be the primary instru-
18 ments through which the United States will pursue
19 its nonproliferation goals, it may also, consistent
20 with the policies of this section and the provisions of
21 this title, take unilateral action.

22 (15) To promote international peace, stability,
23 and respect of fundamental human rights. The Unit-
24 ed States may establish controls on exports that con-
25 tribute to the military capabilities of countries that

1 threaten international peace or stability or to coun-
2 tries that abuse the fundamental rights of their citi-
3 zens, or to promote other important foreign policy
4 objectives of the United States, consistent with the
5 policies of this section and the provisions of this
6 title.

7 **SEC. 104. GENERAL PROVISIONS.**

8 (a) **TYPES OF LICENSES.**—Under such conditions as
9 the Secretary may impose, consistent with the provisions
10 of this title, the Secretary may require any type of license
11 appropriate to the effective and efficient implementation
12 of this title, including the following:

13 (1) **SPECIFIC EXPORTS.**—A license authorizing
14 a specific export.

15 (2) **MULTIPLE EXPORTS.**—Licenses authorizing
16 multiple exports, issued pursuant to an application
17 by the exporter, in lieu of a license for each such ex-
18 port. Licenses under this paragraph shall be de-
19 signed to encourage and acknowledge exporters' in-
20 ternal control programs for ensuring compliance
21 with the terms of the license.

22 (b) **UNITED STATES COMMODITY CONTROL**
23 **INDEX.**—

24 (1) **IN GENERAL.**—The Secretary shall establish
25 and maintain, in consultation with the Secretary of

1 Defense and the heads of other appropriate depart-
2 ments and agencies, a United States Commodity
3 Control Index specifying the license requirements
4 under this title that are applicable to the items on
5 the list.

6 (2) CONTENTS.—The control index shall—

7 (A) consist of a multilateral control list of
8 items on which export controls are imposed
9 under section 105, an emergency control list of
10 items on which export controls are imposed
11 under section 106, and a short supply control
12 list of commodities on which export controls are
13 imposed under section 107;

14 (B) include, as part of the multilateral and
15 emergency control lists, those items identified
16 pursuant to section 111(a);

17 (C) for each item on the control index,
18 specify with particularity the performance
19 (where applicable) and other identifying charac-
20 teristics of the item and provide a rationale for
21 why the item is on the control list;

22 (D) identify countries, and, as appropriate,
23 end uses or end users, including specific
24 projects and end users of concern, cross-ref-
25 erenced with the list of commodities and tech-

1 nology on which export controls are imposed;
2 and

3 (E) be sufficiently specific and clear as to
4 guide exporters and licensing officers in deter-
5 minations of licensing requirements under this
6 title.

7 (c) DENIED OR DEBARRED PARTIES, SANCTIONED
8 PARTIES, BLOCKED PERSONS, SPECIALLY DESIGNATED
9 NATIONALS, AND OTHER PARTIES PRESENTING UNAC-
10 CEPTABLE RISKS OF DIVERSION.—

11 (1) DENIED OR DEBARRED PARTIES, SANC-
12 TIONED PARTIES, BLOCKED PERSONS, AND SPE-
13 Cially DESIGNATED NATIONALS.—The President
14 shall ensure that an official list is published semi-
15 annually in the Federal Register of all parties denied
16 or debarred from export privileges under this title or
17 under the Arms Export Control Act, all parties sanc-
18 tioned for prohibited proliferation activity under this
19 title or other statutes, and all blocked persons and
20 specially designated nationals. For purposes of this
21 paragraph, a “blocked person” or “specially des-
22 igned national” is a person or entity so designated
23 by the President or the Secretary of the Treasury
24 under the Trading With the Enemy Act, or the
25 International Emergency Economic Powers Act, with

1 whom transactions are prohibited on account of the
2 relationship of that person or entity with a country,
3 organization, or activity against which sanctions are
4 imposed under either such Act. Promptly after any
5 person is designated a "blocked person" or "spe-
6 cially designated national", the Secretary of the
7 Treasury shall publish such designation in the Fed-
8 eral Register.

9 (2) OTHER PARTIES.—The Secretary shall
10 maintain a list of parties for whom licenses under
11 this title will be presumptively denied.

12 (d) DELEGATION OF AUTHORITY.—Subject to the
13 provisions of this title, the President may delegate the
14 power, authority, and discretion conferred upon the Presi-
15 dent by this title to such departments, agencies, and offi-
16 cials of the Government as the President considers appro-
17 priate, except that no authority under this title may be
18 delegated to, or exercised by, any official of any depart-
19 ment or agency the head of which is not appointed by the
20 President, by and with the advice and consent of the Sen-
21 ate. The President may not delegate or transfer his power,
22 authority, or discretion to overrule or modify any rec-
23 ommendation or decision made by the Secretary, the Sec-
24 retary of Defense, or the Secretary of State under this

1 title and may not delegate the authority under section
2 106(a)(4).

3 (e) NOTIFICATION OF THE PUBLIC; CONSULTATION
4 WITH BUSINESS.—The Secretary shall keep the public
5 fully apprised of changes in export control policy and pro-
6 cedures instituted in conformity with this title with a view
7 to encouraging trade. The Secretary shall consult regu-
8 larly with representatives of a broad spectrum of enter-
9 prises, labor organizations, and citizens interested in or
10 affected by export controls, in order to obtain their views
11 on United States export control policy and the foreign
12 availability of items subject to controls.

13 (f) EXPORT ADVISORY COMMITTEES.—

14 (1) APPOINTMENT.—Upon his or her own ini-
15 tiative or upon the written request of representatives
16 of a substantial segment of any industry which pro-
17 duces any items subject to export controls under this
18 title or under the International Emergency Eco-
19 nomic Powers Act, or being considered for such con-
20 trols, the Secretary shall appoint export advisory
21 committees with respect to any such items. Each
22 such committee shall consist of representatives of
23 United States industry and Government, including
24 the Department of Commerce and other appropriate
25 departments and agencies of the Government. The

1 Secretary shall permit the widest possible participa-
2 tion by the business community on the export advi-
3 sory committees.

4 (2) FUNCTIONS.—Export advisory committees
5 appointed under paragraph (1) shall advise and as-
6 sist the Secretary, and any other department, agen-
7 cy, or official of the Government carrying out func-
8 tions under this title, on actions (including all as-
9 pects of controls imposed or proposed) designed to
10 carry out the policies of this title concerning the
11 items with respect to which such export advisory
12 committees were appointed. Such committees, where
13 they have expertise in such matters, shall be con-
14 sulted on questions involving—

15 (A) technical matters,

16 (B) worldwide availability and actual utili-
17 zation of production technology,

18 (C) licensing procedures which affect the
19 level of export controls applicable to any items,

20 (D) revisions of the multilateral control list
21 (as provided in section 105(g)), including pro-
22 posed revisions of multilateral controls in which
23 the United States participates,

24 (E) the issuance of regulations,

1 (F) the impact and interpretation of exist-
2 ing regulations,

3 (G) processes and procedures for review of
4 licenses and policy,

5 (H) any other questions relating to actions
6 designed to carry out this title, and

7 (I) the operation and conduct of inter-
8 national business transactions.

9 Nothing in this subsection shall prevent the United
10 States Government from consulting, at any time,
11 with any person representing an industry or the gen-
12 eral public, regardless of whether such person is a
13 member of an export advisory committee. Members
14 of the public shall be given a reasonable opportunity,
15 pursuant to regulations prescribed by the Secretary,
16 to present evidence to such committees.

17 (3) REIMBURSEMENT OF EXPENSES.—Upon
18 the request of any member of any export advisory
19 committee appointed under paragraph (1), the Sec-
20 retary may, if the Secretary determines it to be ap-
21 propriate, reimburse such member for travel, sub-
22 sistence, and other necessary expenses incurred by
23 such member in connection with the duties of such
24 member.

1 (4) CHAIRPERSON.—Each export advisory com-
2 mittee appointed under paragraph (1) shall elect a
3 chairperson, and shall meet at least every 3 months
4 at the call of the chairperson, unless the chairperson
5 determines, in consultation with the other members
6 of the committee, that such a meeting is not nec-
7 essary to achieve the purposes of this subsection.
8 Each such committee shall be terminated after a pe-
9 riod of 2 years, unless extended by the Secretary for
10 additional periods of 2 years each. The Secretary
11 shall consult each such committee on such termi-
12 nation or extension of that committee.

13 (5) ACCESS TO INFORMATION.—To facilitate
14 the work of the export advisory committees ap-
15 pointed under paragraph (1), the Secretary, in con-
16 junction with other departments and agencies par-
17 ticipating in the administration of this title, shall
18 disclose to each such committee adequate informa-
19 tion, consistent with national security, pertaining to
20 the reasons for the export controls which are in ef-
21 fect or contemplated for the items or policies for
22 which that committee furnishes advice. Information
23 provided by the export advisory committees shall not
24 be subject to disclosure under section 552 of title 5,
25 United States Code, and such information shall not

1 be published or disclosed unless the Secretary deter-
2 mines that the withholding thereof is contrary to the
3 national interest.

4 (g) DEVELOPMENT AND REVIEW OF THE CONTROL
5 INDEX.—

6 (1) IN GENERAL.—

7 (A) Consistent with the general guidance
8 of the Export Control Policy Committee estab-
9 lished in section 114(c), the Secretary of De-
10 fense and the heads of other appropriate de-
11 partments and agencies may identify and rec-
12 ommend to the Secretary—

13 (i) commodities and technology for in-
14 clusion on, or deletion from, the multilat-
15 eral and emergency control lists; and

16 (ii) the licensing requirements that
17 should or should not apply to these com-
18 modities and technology.

19 (B) The Secretary of Defense shall have
20 primary responsibility for identifying commod-
21 ities and technologies that are critical to the de-
22 sign, development, test, production, stockpiling,
23 or use of weapons of mass destruction and
24 other military capabilities, including nuclear, bi-
25 ological, and chemical weapons, and manned

1 and unmanned vehicles capable of delivering
2 such weapons, in determining recommendations
3 for inclusion of items on the control index.

4 (C) If the Secretary of Defense, the Sec-
5 retary of State, or the Secretary of Energy dis-
6 agree with the decision of the Secretary regard-
7 ing the inclusion or deletion, or licensing re-
8 quirements of, any commodity or technology,
9 the Secretary of Defense, State, or Energy (as
10 the case may be) may, within 30 days after the
11 Secretary makes the decision, appeal the Sec-
12 retary's decision to the President in writing,
13 but only on the basis of the specific provisions
14 of this title. A Secretary that fails to appeal a
15 decision of the Secretary in accordance with the
16 preceding sentence shall be deemed to have no
17 objection to the decision. The President shall
18 resolve a disagreement under this subsection
19 not later than 30 days after the appeal is made
20 under this paragraph.

21 (2) NEGOTIATIONS.—The Secretary of State, in
22 consultation with appropriate departments and agen-
23 cies, shall be responsible for conducting negotiations
24 with other countries regarding multilateral arrange-
25 ments for restricting the export of items to carry out

1 the policies of this title. All appropriate departments
2 and agencies shall develop initial technical param-
3 eters and product definitions in connection with the
4 development of proposals within the United States
5 Government to be made to multilateral regimes, in
6 consultation with the export advisory committees as
7 provided in paragraph (3).

8 (3) CONSULTATIONS WITH EXPORT ADVISORY
9 COMMITTEES.—The Secretary shall consult with the
10 appropriate export advisory committee appointed
11 under this section with respect to changes in the
12 control index, and such export advisory committee
13 may submit recommendations to the Secretary with
14 respect to such changes. The Secretary shall con-
15 sider the recommendations of the export advisory
16 committee and shall inform the committee of the dis-
17 position of its recommendations. The Secretary shall
18 also seek comments and recommendations from the
19 public in connection with changes in the control
20 index. To the maximum extent practicable and con-
21 sistent with the conduct of international negotiations
22 such comments and recommendations should be
23 taken into consideration in the development of Unit-
24 ed States Government proposals and positions to be
25 taken in multilateral regimes.

1 (h) RIGHT OF EXPORT.—No authority or permission
2 to export may be required under this title, or under regula-
3 tions issued under this title, except to carry out the poli-
4 cies set forth in section 103.

5 (i) INTERNATIONAL OBLIGATIONS UNDER TREA-
6 TIES.—Notwithstanding any other provision of this title
7 containing limitations on authority to control exports, the
8 Secretary, in consultation with the Secretary of State, may
9 impose controls on exports to a particular country or coun-
10 tries in order to fulfill obligations of the United States
11 under resolutions of the United Nations and under trea-
12 ties to which the United States is a party. The Secretary
13 may regulate domestic and foreign conduct consistent with
14 the policies of such United Nations resolutions, treaties,
15 and other international agreements. Such authority shall
16 include, but not be limited to, authority to prohibit activity
17 such as financing, contracting, providing services, or em-
18 ployment, to deny access to items in the United States
19 and abroad, to conduct audits of records and inspections
20 of facilities, to compel reports, and to curtail travel.

21 (j) FEES.—No fee may be charged in connection with
22 the submission or processing of an export license applica-
23 tion under this title.

24 SEC. 105. MULTILATERAL CONTROLS.

25 (a) AUTHORITY.—

1 (1) IN GENERAL.—In order to carry out the
2 policies set forth in paragraphs (1), (2), (5), (13),
3 (14), and (15) of section 103, the President may, in
4 accordance with this section, prohibit, curtail, or re-
5 quire the provision of information regarding, the ex-
6 port of any commodities, technology, or other infor-
7 mation subject to the jurisdiction of the United
8 States, or exported by any person subject to the ju-
9 risdiction of the United States, in order to imple-
10 ment multilateral export control regimes. The au-
11 thority under this paragraph shall include, but not
12 be limited to, the authority to regulate domestic and
13 foreign conduct, to prohibit activity such as financ-
14 ing, contracting, providing services, or employment,
15 to deny access to items in the United States and
16 abroad, to conduct audits of records and inspections
17 of facilities, and to compel reports. The authority
18 granted by this subsection may not be exercised to
19 impose unilateral controls.

20 (2) EXERCISE OF AUTHORITY.—The authority
21 granted by this subsection shall be implemented by
22 the Secretary, in consultation with appropriate de-
23 partments and agencies.

24 (3) CONSISTENCY WITH EXPORT CONTROL RE-
25 GIMES.—Any provision of this title that provides

1 that no authority or permission to export may be re-
2 quired under this title shall not apply to the extent
3 that such a provision is inconsistent with an inter-
4 national commitment of the United States under a
5 multilateral export control regime.

6 (b) MULTILATERAL CONTROL LIST.—The Secretary
7 shall, in consultation with appropriate departments and
8 agencies as provided in section 104(g), designate as part
9 of the control index, a multilateral control list, comprised
10 of the items on which export controls are in effect under
11 this section.

12 (c) EXPORT LICENSING POLICIES.—The President
13 shall ensure that steps are taken to increase the degree
14 to which the licensing requirements of other export regime
15 members are harmonized with the licensing requirements
16 maintained by the Secretary in controlling items under
17 this section.

18 (d) MULTILATERAL CONTROL REGIMES.—

19 (1) POLICY.—In order to carry out the policies
20 set forth in section 103, the Secretary of State, in
21 consultation with appropriate departments and agen-
22 cies, should seek multilateral arrangements that are
23 intended to secure effective achievement of these
24 policies and, in so doing, also establish fairer and

1 more predictable competitive opportunities for Unit-
2 ed States exporters.

3 (2) STANDARDS FOR NATIONAL SYSTEMS.—In
4 the establishment and maintenance of multilateral
5 regimes, the Secretary of State, in consultation with
6 appropriate departments and agencies, shall take
7 steps to attain the cooperation of members of the re-
8 gimes in the effective implementation of export con-
9 trol systems. Such systems should contain the fol-
10 lowing elements:

11 (A) National laws providing sufficient en-
12 forcement authorities, civil and criminal pen-
13 alties, and statutes of limitations sufficient to
14 deter potential violations and punish violators.

15 (B) A program to evaluate export license
16 applications that includes sufficient technical
17 expertise to assess the licensing status of ex-
18 ports and ensure the reliability of end users.

19 (C) An enforcement mechanism that pro-
20 vides authority for trained enforcement officers
21 to investigate and prevent illegal exports.

22 (D) A system of export control documenta-
23 tion to verify the movement of items.

1 (E) Procedures for the coordination and
2 exchange of information concerning licensing,
3 end users, and enforcement.

4 (F) Adequate national resources devoted to
5 carrying out subparagraphs (A) through (E).

6 (3) STANDARDS FOR MULTILATERAL RE-
7 GIMES.—In the establishment and maintenance of
8 multilateral regimes, the Secretary of State, in con-
9 sultation with appropriate departments and agen-
10 cies, should seek, consistent with the policies set
11 forth in section 103, the following features for the
12 multilateral control regimes in which the United
13 States participates:

14 (A) FULL MEMBERSHIP.—Achieve mem-
15 bership of all supplier countries whose policies
16 and activities are consistent with the objectives
17 and membership criteria of the multilateral re-
18 gime.

19 (B) EFFECTIVE ENFORCEMENT AND COM-
20 PLIANCE.—Promote enforcement and compli-
21 ance with the rules and guidelines of the mem-
22 bers of the regime through maintenance of an
23 effective control list.

1 (C) PUBLIC UNDERSTANDING.—Enhance
2 public understanding of each regime's purpose
3 and procedures.

4 (D) EFFECTIVE IMPLEMENTATION PROCE-
5 DURES.—Achieve procedures for effective imple-
6 mentation of the regime rules and guidelines
7 through uniform and consistent interpretations
8 of export controls agreed to by the governments
9 participating in the regime.

10 (E) ENHANCED COOPERATION AMONG RE-
11 GIME MEMBERS.—Reach agreement to enhance
12 cooperation among members of the regime in
13 obtaining the agreement of governments outside
14 the regime to restrict the export of items con-
15 trolled by the regime, to establish an ongoing
16 mechanism in the regime to coordinate planning
17 and implementation of export control measures
18 related to such agreements, and to remove
19 items from the list of items controlled by the re-
20 gime if the control of such items no longer
21 serves the objectives of the members of the re-
22 gime.

23 (F) PERIODIC HIGH-LEVEL MEETINGS.—
24 Conduct periodic meetings of high-level rep-
25 resentatives of participating governments for

1 the purpose of coordinating export control poli-
2 cies and issuing policy guidance to members of
3 the regime.

4 (G) COMMON LIST OF CONTROLLED
5 ITEMS.—Reach agreement on a common list of
6 items controlled by the regime.

7 (H) TREATMENT OF CERTAIN COUN-
8 TRIES.—Prevent the export or diversion of the
9 most sensitive items to countries whose activi-
10 ties are threatening to the national security of
11 the United States or its allies.

12 (I) DISCLOSURE OF NONPROPRIETARY IN-
13 FORMATION.—Promote transparency and timely
14 disclosure of nonproprietary information with
15 respect to the transfers of sensitive dual-use
16 commodities and technologies, when appro-
17 priate, for the purpose of developing common
18 understandings of the risks to international
19 peace and regional security associated with such
20 transfers and to coordinate national control
21 policies to combat those risks.

22 (e) INCENTIVES FOR PARTNERSHIP.—Consistent
23 with the policies of this title and consistent with the objec-
24 tives, rules, and guidelines of the individual regime—

1 (1) the Secretary, in consultation with appro-
2 priate departments and agencies, may provide for
3 exports free of license requirements to and among
4 members of a multilateral regime for items subject
5 to controls under such a multilateral regime; and

6 (2) the Secretary, in consultation with appro-
7 priate departments and agencies, may adjust licens-
8 ing policies with respect to a particular country or
9 entity for access to items controlled under this title
10 to the extent of the adherence of that country or en-
11 tity to the export control policies of this section.

12 Actions by the Secretary under paragraphs (1) and (2)
13 shall be consistent with the requirements of section
14 111(a)(1)(C).

15 (f) TRANSPARENCY OF MULTILATERAL CONTROL
16 REGIMES.—

17 (1) PUBLICATION OF INFORMATION ON EACH
18 EXISTING REGIME.—Within 6 months after the date
19 of the enactment of this Act, the Secretary shall, to
20 the extent doing so is not inconsistent with arrange-
21 ments in multilateral export control regimes, publish
22 in the Federal Register the following information
23 with respect to each multilateral control regime ex-
24 isting on the date of the enactment of this Act:

25 (A) Purposes of the control regime.

1 (B) Members of the regime.

2 (C) Licensing policy.

3 (D) Items subject to the controls under the
4 regime, together with all public notes, under-
5 standings, and other aspects of the agreement
6 of the regime, and all changes thereto.

7 (E) Any countries, end uses, or end users
8 that are subject to the controls.

9 (F) Rules of interpretation.

10 (G) Major policy actions.

11 (H) The rules and procedures of the re-
12 gime for establishing and modifying any matter
13 described in subparagraphs (A) through (G)
14 and for reviewing export license applications.

15 (2) NEW REGIMES.—Within 2 months after the
16 United States joins or organizes a new export con-
17 trol regime, the Secretary shall, to the extent doing
18 so is not inconsistent with arrangements in the re-
19 gime, publish the information described in subpara-
20 graphs (A) through (H) of paragraph (1).

21 (3) PUBLICATION OF CHANGES.—Within 2
22 months after the applicable regime adopts any
23 changes in the information published under this sub-
24 section, the Secretary shall, to the extent doing so

1 is not inconsistent with arrangements in the regime,
2 publish such changes in the Federal Register.

3 (g) REVIEW OF CONTROLLED ITEMS.—

4 (1) IN GENERAL.—Under the policy guidance of
5 the Export Control Policy Committee established in
6 section 114(c), and consistent with the procedures in
7 section 104(g), the Secretary shall review all items
8 on the multilateral control list maintained under
9 subsection (b) at least every 2 years, except that the
10 Secretary shall review annually whether the policy
11 set forth in section 103(12) is being achieved. At the
12 conclusion of each review, the Secretary shall decide
13 whether to maintain or remove items from the multi-
14 lateral control list, maintain, change, or eliminate
15 the specifications, performance thresholds, or licens-
16 ing requirements on items on the list, or add items
17 to the list.

18 (2) CONSIDERATIONS.—In conducting the re-
19 view, the Secretary shall—

20 (A) consult with the Secretary of Defense
21 concerning militarily critical technologies;

22 (B) consult with the appropriate export ad-
23 visory committees appointed under section
24 104(f) and consider recommendations of such

1 committees with respect to proposed changes in
2 the multilateral control list;

3 (C) consider whether controlled items or
4 their equivalent are so widely available in the
5 United States (in terms of quantity, cost, and
6 means of sale and delivery) that the require-
7 ment for a license is ineffective in achieving the
8 purpose of the control;

9 (D) consider whether the differences be-
10 tween the export controls of the United States
11 and that of governments of foreign suppliers or
12 competing items effectively has placed or will
13 place the United States exporter at a significant
14 commercial disadvantage with respect to its
15 competitors abroad, and has placed, or will
16 place, employment in the United States in jeop-
17 ardy;

18 (E) consider the results of determinations
19 made under section 114(k); and

20 (F) consider comments received pursuant
21 to the notice of review provided under para-
22 graph (3)(A).

23 (3) PROCEDURES.—

24 (A) NOTICE OF REVIEW.—Before begin-
25 ning each review under this subsection, the Sec-

1 retary shall publish a notice of that review in
2 the Federal Register and shall provide a 30-day
3 period for comments and submission of data,
4 including by exporters and other interested parties.
5 ties.

6 (B) PROPOSALS TO EXPORT CONTROL RE-
7 GIMES.—If a revision to the multilateral control
8 list or to a licensing requirement under this
9 paragraph is inconsistent with the control lists,
10 guidelines, or the licensing requirements of, an
11 export control regime, the Secretary of State
12 shall propose such revision to that regime. Such
13 revision shall become effective only to the extent
14 such revision is agreed to by the export control
15 regime.

16 (C) PUBLICATION OF REVISIONS.—The
17 Secretary shall publish in the Federal Register
18 any revisions in the list, with an explanation of
19 the reasons for the revisions.

20 SEC. 106. EMERGENCY CONTROLS.

21 (a) AUTHORITY.—

22 (1) IN GENERAL.—In order to carry out the
23 policy set forth in paragraphs (1), (2), (6), (8), (14),
24 and (15) of section 103, the President may, in ac-
25 cordance with the provisions of this section, unilater-

1 ally prohibit, curtail, or require the provision of in-
2 formation regarding the export of any commodity,
3 technology, or other information subject to the juris-
4 diction of the United States or exported by any per-
5 son subject to the jurisdiction of the United States.
6 The authority under this paragraph shall include,
7 but not be limited to, the authority to regulate do-
8 mestic and foreign conduct, to prohibit activity such
9 as financing, contracting, providing services, or em-
10 ployment, to deny access to items in the United
11 States and abroad, to conduct audits of records and
12 inspections of facilities, and to compel reports.

13 (2) EXERCISE OF AUTHORITY.—The authority
14 contained in this section shall be exercised by the
15 Secretary, in consultation with the Secretary of
16 State, the Secretary of Defense, and such other de-
17 partments and agencies as the President considers
18 appropriate, and consistent with the procedures in
19 section 104(g).

20 (3) EXPIRATION OF CONTROLS.—

21 (A) IN GENERAL.—Any controls imposed
22 under this section shall expire 12 months after
23 they are imposed, unless they are terminated
24 earlier by the President or unless they are ex-
25 tended under this section, except that such con-

1 tols may be adopted as multilateral controls
2 under section 105 or included in an embargo
3 that is imposed by the President under the
4 International Emergency Economic Powers Act,
5 the Trading with the Enemy Act, or other pro-
6 vision of law other than this title. Any extension
7 or subsequent extension of the controls under
8 this section shall be for a period of not more
9 than 1 year each. The controls shall expire at
10 the end of each such extension unless they are
11 terminated earlier by the President or unless
12 they are further extended under this section,
13 except that such controls may be adopted as
14 multilateral controls under section 105 or in-
15 cluded in an embargo described in the first sen-
16 tence of this subparagraph.

17 (B) EXCEPTION FOR MULTILATERAL
18 AGREEMENTS.—Subparagraph (A) shall not
19 apply to controls imposed by the President in
20 order to fulfill obligations of the United States
21 under resolutions of the United Nations or
22 under treaties to which the United States is a
23 party. If such a resolution or treaty ceases to
24 be in effect, controls imposed by the President

1 pursuant to such resolution or treaty shall im-
2 mediately cease to be in effect.

3 (4) CRITERIA.—Controls may be imposed, ex-
4 panded, or extended under this section only if the
5 President determines that—

6 (A) the controls are necessary to further
7 significantly the nonproliferation, national secu-
8 rity, or foreign policies of the United States
9 provided in section 103, the objective of the
10 controls is in the overall national interest of the
11 United States, and reasonable alternative
12 means to the controls are not available;

13 (B) the controls are likely to make sub-
14 stantial progress toward achieving the intended
15 purpose of—

16 (i) changing, modifying, or constrain-
17 ing the undesirable conduct or policies of
18 the country to which the controls apply;

19 (ii) denying access by the country to
20 controlled items from all sources;

21 (iii) establishing multilateral coopera-
22 tion to deny the country access to con-
23 trolled items from all sources; or

24 (iv) denying exports or assistance that
25 significantly contributes to the prolifera-

1 tion of weapons of mass destruction or
2 other important military capabilities, ter-
3 rorism, or human rights abuses;

4 (C) the proposed controls are compatible
5 with the foreign policy objectives of the United
6 States and with overall United States policy to-
7 ward the country to which the controls apply;

8 (D) the reaction of other countries to the
9 imposition or expansion of such export controls
10 by the United States is not likely to render the
11 controls ineffective in achieving the intended
12 purpose or to be counter-productive to United
13 States policy interests;

14 (E) the effect of the proposed controls on
15 the export performance of the United States,
16 the competitive position of the United States as
17 a supplier of items, or on the economic well-
18 being of individual United States companies
19 and their employees and communities does not
20 exceed the benefit to the United States foreign
21 policy, nonproliferation, or national security in-
22 terests; and

23 (F) the United States has the ability to en-
24 force the proposed controls effectively.

1 (b) CONSULTATION WITH INDUSTRY.—The Sec-
2 retary shall consult with and seek advice from affected
3 United States industries and export advisory committees
4 appointed under section 104(f) before the imposition, ex-
5 pansion, or extension of any export control under this sec-
6 tion.

7 (c) CONSULTATION WITH OTHER COUNTRIES.—
8 When expanding or extending export controls under this
9 section (unless such action is taken under subsection
10 (a)(3)(B)), the Secretary of State, in consultation with ap-
11 propriate departments and agencies, shall, at the earliest
12 appropriate opportunity, consult with the countries with
13 which the United States maintains export controls coop-
14 eratively, and with other countries, as appropriate, to ad-
15 vise them of the reasons for the action and to urge them
16 to adopt similar controls.

17 (d) CONSULTATIONS WITH THE CONGRESS.—

18 (1) CONSULTATIONS.—The Secretary may im-
19 pose, expand, or extend export controls under this
20 section only after consultation with the Congress, in-
21 cluding the Committee on International Relations of
22 the House of Representatives and the Committee on
23 Banking, Housing, and Urban Affairs of the Senate.

1 (2) REPORTS.—The Secretary may not impose
2 or expand controls under subsection (a) until the
3 Secretary has submitted to the Congress a report—

4 (A) addressing each of the criteria set
5 forth in subsection (a)(4);

6 (B) specifying the purpose of the controls;

7 (C) describing the nature, the subjects,
8 and the results of, or plans for, the consultation
9 with industry under subsection (b) and with
10 other countries under subsection (c);

11 (D) specifying the nature and results of
12 any alternative means attempted to achieve the
13 objectives of the controls, or the reasons for im-
14 posing or expanding the controls without at-
15 tempting any such alternative means; and

16 (E) describing the availability from other
17 countries of items comparable to the items sub-
18 ject to the controls, and describing the nature
19 and results of the efforts made to secure the co-
20 operation of foreign governments in controlling
21 the foreign availability of such comparable com-
22 modities or technology.

23 Such report shall also indicate how such controls will
24 further significantly the policies of the United States

1 as set forth in section 103 or will further its de-
2 clared international obligations.

3 (e) SEEKING MULTILATERAL SUPPORT FOR UNILAT-
4 ERAL CONTROLS.—The Secretary of State, in consultation
5 with appropriate departments and agencies, shall have a
6 continuing duty to seek support for controls imposed
7 under this section by other countries and by effective mul-
8 tilateral control regimes.

9 (f) PROCEDURES AND LIMITATIONS ON EMERGENCY
10 CONTROLS.—

11 (1) CESSATION OF EMERGENCY CONTROLS.—

12 (A) IN GENERAL.—Controls imposed under
13 this section on commodities, technology, or
14 other information shall cease to be in effect im-
15 mediately upon—

16 (i) the imposition of similarly restric-
17 tive controls under section 105 on the
18 same commodities, technology, or informa-
19 tion to the country or end user, or for the
20 end use, with respect to which the controls
21 were imposed under this section; or

22 (ii) the imposition of an embargo,
23 under the International Emergency Eco-
24 nomic Powers Act, the Trading with the
25 Enemy Act, or other provision of law, on

1 exports to, and imports from the country
2 with respect to which the controls were im-
3 posed under this section.

4 (B) CONVERSION TO MULTILATERAL
5 AGREEMENTS.—If the President imposes con-
6 trols on commodities, technology, or other infor-
7 mation to a country or end user, or for an end
8 use, under this section in order to fulfill obliga-
9 tions of the United States under resolutions of
10 the United Nations or under a treaty to which
11 the United States is a party, any equivalent
12 controls imposed prior thereto under this sec-
13 tion on the same commodities, technology, or
14 information to the same country or end user, or
15 for the same end use, shall immediately cease
16 to be in effect.

17 (2) LIMITATIONS ON REIMPOSITION.—Controls
18 which have ceased to be in effect under subsection
19 (a)(3), and which have not been extended under sub-
20 section (g), may not be reimposed by the President
21 under subsection (a) for a period of 6 months begin-
22 ning on the date on which the original controls ex-
23 pire, unless the President determines that reimposi-
24 tion of controls is warranted due to significant

1 changes in circumstances since the expiration of the
2 controls.

3 (g) EXTENSION OF EMERGENCY CONTROLS.—

4 (1) REPORT.—If the President decides to ex-
5 tend controls imposed under subsection (a), which
6 are due to expire under subsection (a)(3), the Presi-
7 dent shall, not later than 30 calendar days before
8 the expiration of such controls, transmit to the Con-
9 gress a report on the proposed extension, setting
10 forth the reasons for the proposed extension in detail
11 and specifying the period of time, which may not ex-
12 ceed 1 year, for which the controls are proposed to
13 be extended. In particular, such report shall—

14 (A) contain determinations by the Presi-
15 dent—

16 (i) that the controls are likely to con-
17 tinue to make substantial progress toward
18 achieving the intended purpose of—

19 (I) changing, modifying, or con-
20 straining the undesirable conduct or
21 policies of the country to which the
22 controls apply;

23 (II) denying access by the coun-
24 try to controlled items from all
25 sources;

1 (III) establishing multilateral co-
2 operation to deny the country access
3 to controlled items from all sources;
4 or

5 (IV) denying exports or assist-
6 ance that significantly contributes to
7 the proliferation of weapons of mass
8 destruction or other important mili-
9 tary capabilities, terrorism, or human
10 rights abuses;

11 (ii) that the impact of the controls has
12 been compatible with the foreign policy ob-
13 jectives of the United States and with
14 overall United States policy toward the
15 controlled country;

16 (iii) that the reaction of other coun-
17 tries to the imposition or expansion of the
18 controls by the United States has not ren-
19 dered the controls ineffective in achieving
20 the intended purpose and have not been
21 counterproductive to United States policy
22 interests;

23 (iv) that the effect of the controls on
24 the export performance of the United
25 States, the competitive position of the

1 United States as a supplier of items, and
2 the economic well-being of individual Unit-
3 ed States companies and their employees
4 and communities has not exceeded the ben-
5 efit to the United States foreign policy,
6 nonproliferation, or national security inter-
7 ests; and

8 (vi) that the United States has en-
9 forced the controls effectively.

10 (2) FURTHER EXTENSIONS OF CONTROLS.—If,
11 upon the expiration of the controls extended under
12 this subsection, the President determines that a fur-
13 ther extension of emergency controls for an addi-
14 tional period of time of not more than 1 year is nec-
15 essary, paragraph (1) shall apply to such further ex-
16 tension.

17 (h) EFFECT ON OTHER AUTHORITY.—

18 (1) EMBARGO AUTHORITY.—Nothing in this
19 section shall be construed to limit the authority of
20 the President to impose an embargo on exports to,
21 and imports from, a specific country under the
22 International Emergency Economic Powers Act, the
23 Trading with the Enemy Act, or other provision of
24 law (other than this title). In any case in which the
25 President exercises any such authority to impose an

1 embargo, the requirements of this section shall not
2 apply for so long as such embargo is in effect.

3 (2) EFFECT ON EXISTING EMBARGOES.—(A)
4 Nothing in this section affects the authorities con-
5 ferred upon the President by section 5(b) of the
6 Trading with the Enemy Act, which were being exer-
7 cised with respect to a country on July 1, 1977, as
8 a result of a national emergency declared by the
9 President before that date, and are being exercised
10 on the date of the enactment of this Act.

11 (B) Nothing in this section affects the authori-
12 ties conferred upon the President by the Inter-
13 national Economic Powers Act or other provision of
14 law (other than the Export Administration Act of
15 1979), which were being exercised with respect to a
16 country before the date of the enactment of this Act
17 as a result of a national emergency declared by the
18 President before that date, and are being exercised
19 with respect to such country on such date of enact-
20 ment.

21 (i) COUNTRIES SUPPORTING INTERNATIONAL TER-
22 RORISM.—

23 (1) PROHIBITION ON EXPORTS.—(A) No export
24 described in subparagraph (B) may be made to any
25 country the government of which the Secretary of

1 State has determined has repeatedly provided sup-
2 port for acts of international terrorism.

3 (B) The exports and reexports referred to in
4 subparagraph (A) are—

5 (i) of any commodity or technology the ex-
6 port of which is controlled under this Act pur-
7 suant to the Wassenaar Arrangement, the Mis-
8 sile Technology Control Regime, or the Aus-
9 tralia Group, or controlled under this title pur-
10 suant to section 309(c) of the Nuclear Non-
11 Proliferation Act of 1978,

12 (ii) of any other commodity or technology
13 the export of which is controlled under this Act
14 pursuant to multilateral export control regimes
15 in which the United States participates, and

16 (iii) of any commodity or technology which
17 could make a significant contribution to the
18 military potential of a country described in sub-
19 paragraph (A), including its military logistics
20 capability, or could enhance the ability of such
21 country to support acts of international terror-
22 ism,

23 other than food, medicine, or medical supplies that
24 the President determines will be used only for hu-
25 manitarian purposes. An individual validated license

1 shall be required for the export under this para-
2 graph of any such food, medicine, or medical sup-
3 plies.

4 (C) Subsections (a)(3) and (b) shall not apply
5 to exports prohibited or restricted under this sub-
6 section.

7 (D)(i) The Secretary shall maintain a list of
8 commodities and technology described in subpara-
9 graph (B)(iii). The Secretary shall review the list of
10 items on that list at least annually. At the conclu-
11 sion of the review, the Secretary shall determine
12 whether to remove items from the list, change the
13 specifications of items on the list, or add items to
14 the list, in order to ensure that the items on the list
15 meet the requirements of subparagraph (B)(iii).

16 (ii) The procedures set forth in subparagraphs
17 (A) and (C) of section 105(g)(3) shall apply to re-
18 views under clause (i) of the list of items described
19 in subparagraph (B)(iii) to the same extent as such
20 section applies to reviews of the control list under
21 section 105(g).

22 (2) NOTIFICATION OF CONGRESS OF LICENSES
23 ISSUED.—The Secretary and the Secretary of State
24 shall notify the Speaker of the House of Representa-
25 tives and the Committee on Banking, Housing, and

1 Urban Affairs and the Committee on Foreign Rela-
2 tions of the Senate at least 30 days before issuing
3 any license under this Act for exports to a country
4 the government of which the Secretary of State has
5 determined has repeatedly provided support for acts
6 of international terrorism.

7 (3) PUBLICATION OF DETERMINATIONS.—Each
8 determination of the Secretary of State under para-
9 graph (1)(A) shall be published in the Federal Reg-
10 ister.

11 (4) RESCISSION OF DETERMINATIONS.—A de-
12 termination made by the Secretary of State under
13 paragraph (1)(A) may not be rescinded unless the
14 President submits to the Speaker of the House of
15 Representatives and the chairman of the Committee
16 on Banking, Housing, and Urban Affairs and the
17 chairman of the Committee on Foreign Relations of
18 the Senate—

19 (A) before the proposed rescission would
20 take effect, a report certifying that—

21 (i) there has been a fundamental
22 change in the leadership and policies of the
23 government of the country concerned;

24 (ii) that government is not supporting
25 acts of international terrorism; and

1 (iii) that government has provided as-
2 surances that it will not support acts of
3 international terrorism in the future; or

4 (B) at least 45 days before the proposed
5 rescission would take effect, a report justifying
6 the rescission and certifying that—

7 (i) the government concerned has not
8 provided any support for international ter-
9 rorism during the preceding 6-month pe-
10 riod; and

11 (ii) the government concerned has
12 provided assurances that it will not sup-
13 port acts of international terrorism in the
14 future.

15 (5) WAIVER OF PROHIBITIONS.—The President
16 may waive the prohibitions contained in paragraph
17 (1)(A) with respect to a specific transaction if—

18 (A) the President determines that the
19 transaction is essential to the national security
20 interests of the United States; and

21 (B) not less than 30 days prior to the pro-
22 posed transaction, the President—

23 (i) consults with the Committee on
24 International Relations of the House of
25 Representatives and the Committee on

1 Banking, Housing, and Urban Affairs of
2 the Senate regarding the proposed trans-
3 action; and

4 (ii) submits to the Speaker of the
5 House of Representatives and the chair-
6 man of the Committee on Banking, Hous-
7 ing, and Urban Affairs of the Senate a re-
8 port containing—

9 (I) the name of any country in-
10 volved in the proposed transaction,
11 the identity of any recipient of the
12 items to be provided pursuant to the
13 proposed transaction, and the antici-
14 pated use of those items;

15 (II) a description of the items in-
16 volved in the proposed transaction (in-
17 cluding their market value) and the
18 actual sale price at each step in the
19 transaction;

20 (III) the reasons why the pro-
21 posed transaction is essential to the
22 national security interests of the Unit-
23 ed States and the justification for the
24 proposed transaction;

1 (IV) the date on which the pro-
2 posed transaction is expected to occur;
3 and

4 (V) the name of any foreign gov-
5 ernments involved in the proposed
6 transaction.

7 To the extent possible, the information specified in
8 clause (ii) of subparagraph (B) shall be provided in
9 unclassified form.

10 (6) MULTILATERAL REGIMES.—The Secretary
11 of State, in consultation with appropriate depart-
12 ments and agencies, shall seek support by other
13 countries and by effective multilateral control re-
14 gimes of controls imposed by this subsection.

15 (7) EFFECT ON OTHER LAWS.—The provisions
16 of this subsection do not affect any other provision
17 of law to the extent such other provision imposes
18 greater restrictions on exports to any country the
19 government of which the Secretary of State has de-
20 termined has repeatedly provided support for acts of
21 international terrorism than are imposed under this
22 subsection.

23 (j) CRIME CONTROL INSTRUMENTS.—

24 (1) LICENSE REQUIRED.—Crime control and
25 detection instruments and equipment shall be ap-

1 proved for export by the Secretary only pursuant to
2 an export license. Paragraphs (3)(A) and (4) of sub-
3 section (a) shall not apply to the export controls im-
4 posed by this subsection.

5 (2) CONCURRENCE OF SECRETARY OF STATE.—

6 (A) ITEMS ON CONTROL INDEX.—Any de-
7 termination of the Secretary of what commod-
8 ities or technology shall be included on the con-
9 trol index as a result of the export restrictions
10 imposed by this subsection shall be made with
11 the concurrence of the Secretary of State.

12 (B) ACTION ON LICENSE APPLICATION.—

13 Any determination of the Secretary to approve
14 or deny an export license application to export
15 crime control or detection instruments or equip-
16 ment shall be made with the concurrence of the
17 Secretary of State.

18 (3) DISPUTE RESOLUTION.—If the Secretary of
19 State does not agree with the Secretary with respect
20 to any determination under paragraph (2), the Sec-
21 retary of State shall refer the matter to the Presi-
22 dent for resolution.

23 (4) EXCEPTIONS.—The provisions of this sub-
24 section shall not apply with respect to exports to
25 countries which are members of the North Atlantic

1 Treaty Organization or to Japan, Australia, or New
2 Zealand, or to such other countries as the President
3 shall designate consistent with the purposes of this
4 subsection and section 502B of the Foreign Assist-
5 ance Act of 1961.

6 (k) SPARE PARTS.—At the same time as the Presi-
7 dent imposes or expands export controls under this sec-
8 tion, the President shall determine whether such export
9 controls will apply to replacement parts or parts in com-
10 modities subject to such export controls.

11 (l) EFFECT ON OTHER LAWS.—None of the prohibi-
12 tions contained in this section shall apply to any trans-
13 action subject to the reporting requirements of title V of
14 the National Security Act of 1947.

15 **SEC. 107. SHORT SUPPLY CONTROLS.**

16 (a) AUTHORITY.—

17 (1) IN GENERAL.—In order to carry out the
18 policy set forth in section 103(4), the President may
19 prohibit or curtail the export of any commodities
20 subject to the jurisdiction of the United States or
21 exported by any person subject to the jurisdiction of
22 the United States. In curtailing exports to carry out
23 the policy set forth in section 103(4), the President
24 shall allocate a portion of export licenses on the
25 basis of factors other than a prior history of expor-

1 tation. Such factors shall include the extent to which
2 a country engages in equitable trade practices with
3 respect to United States commodities and treats the
4 United States equitably in times of short supply.

5 (2) PUBLIC PARTICIPATION.—Upon imposing
6 quantitative restrictions on exports of any commod-
7 ities to carry out the policy set forth in section
8 103(4), the Secretary shall include in a notice pub-
9 lished in the Federal Register with respect to such
10 restrictions an invitation to all interested parties to
11 submit written comments within 15 days after the
12 date of publication on the impact of such restrictions
13 and the method of licensing used to implement
14 them.

15 (3) LICENSE FEES.—In imposing export con-
16 trols under this section, the President's authority
17 shall include, but not be limited to, the imposition
18 of export license fees.

19 (b) MONITORING.—

20 (1) IN GENERAL.—In order to carry out the
21 policy set forth in section 103(4), the Secretary shall
22 monitor exports, and contracts for exports, of any
23 commodity when the volume of such exports in rela-
24 tion to domestic supply contributes, or may contrib-
25 ute, to an increase in domestic prices or a domestic

1 shortage, and such price increase or shortage has, or
2 may have, a serious adverse impact on the economy
3 or any sector thereof. Any such monitoring shall
4 commence at a time adequate to assure that the
5 monitoring will result in a data base sufficient to en-
6 able policies to be developed, in accordance with sec-
7 tion 103(4), to mitigate a short supply situation or
8 serious inflationary price rise or, if export controls
9 are needed, to permit imposition of such controls in
10 a timely manner. Information which the Secretary
11 requires to be furnished in effecting such monitoring
12 shall be confidential, except as provided in para-
13 graph (2).

14 (2) REPORTS ON MONITORING.—The results of
15 monitoring under paragraph (1) shall, to the extent
16 practicable, be aggregated and included in weekly re-
17 ports setting forth, with respect to each item mon-
18 itored, actual and anticipated exports, the destina-
19 tion by country, and the domestic and worldwide
20 price, supply, and demand. Such reports may be
21 made monthly if the Secretary determines that there
22 is insufficient information to justify weekly reports.

23 (3) CONSULTATION WITH SECRETARY OF EN-
24 ERGY.—The Secretary shall consult with the Sec-
25 retary of Energy to determine whether monitoring or

1 export controls under this section are warranted
2 with respect to exports of facilities, machinery, or
3 equipment normally and principally used, or in-
4 tended to be used, in the production, conversion, or
5 transportation of fuels and energy (except nuclear
6 energy), including, but not limited to—

7 (A) drilling rigs, platforms, and equipment;

8 (B) petroleum refineries, and natural gas
9 processing, liquefaction, and gasification plants;

10 (C) facilities for production of synthetic
11 natural gas or synthetic crude oil;

12 (D) oil and gas pipelines, pumping sta-
13 tions, and associated equipment; and

14 (E) vessels for transporting oil, gas, coal,
15 and other fuels.

16 (c) PETITIONS FOR MONITORING OR CONTROLS OF
17 METALLIC MATERIALS.—

18 (1) IN GENERAL.—(A) Any entity, including a
19 trade association, firm, or certified or recognized
20 union or group of workers, that is representative of
21 an industry or a substantial segment of an industry
22 that processes metallic materials capable of being re-
23 cycled may transmit a written petition to the Sec-
24 retary requesting the monitoring of exports or the
25 imposition of export controls, or both, with respect

1 to any such material, in order to carry out the policy
2 set forth in section 103(4).

3 (B) Each petition shall be in such form as the
4 Secretary shall prescribe and shall contain informa-
5 tion in support of the action requested. The petition
6 shall include any information reasonably available to
7 the petitioner indicating that each of the criteria set
8 forth in paragraph (3)(A) is satisfied.

9 (2) PUBLICATION OF NOTICE.—Within 15 days
10 after receipt of any petition described in paragraph
11 (1), the Secretary shall publish a notice in the Fed-
12 eral Register. The notice shall—

13 (A) include the name of the material that
14 is the subject to the petition;

15 (B) include the schedule B number of the
16 material as set forth in the Statistical Classi-
17 fication of Domestic and Foreign Commodities
18 Exported from the United States;

19 (C) indicate whether the petition is re-
20 questing that controls or monitoring, or both,
21 be imposed with respect to the exportation of
22 such material; and

23 (D) provide that interested persons shall
24 have a period of 30 days beginning on the date
25 on which the notice is published to submit to

1 the Secretary written data, views, or argu-
2 ments, with or without opportunity for oral
3 presentation, with respect to the matter in-
4 volved.

5 At the request of the petitioner or any other entity
6 described in paragraph (1)(A) with respect to the
7 material which is the subject of the petition, or at
8 the request of any entity representative of producers
9 or exporters of such material, the Secretary shall
10 conduct public hearings with respect to the subject
11 of the petition, in which case the 30-day period may
12 be extended to 45 days.

13 (3) DETERMINATION OF MONITORING OR CON-
14 TROLS.—(A) Within 45 days after the end of the
15 30- or 45-day period described in paragraph (2), as
16 the case may be, the Secretary shall determine
17 whether to impose monitoring or controls, or both,
18 on the export of the material that is the subject of
19 the petition in order to carry out the policy set forth
20 in section 103(4). In making such determination,
21 the Secretary shall determine whether—

22 (i) there has been a significant increase, in
23 relation to a specific period of time, in exports
24 of such material in relation to domestic supply
25 and demand;

1 (ii) there has been a significant increase in
2 domestic price of such material or a domestic
3 shortage of such material relative to demand;

4 (iii) exports of such material are as impor-
5 tant as any other cause of a domestic price in-
6 crease or shortage relative to demand found
7 under clause (ii);

8 (iv) a domestic price increase or shortage
9 relative to demand found under clause (ii) has
10 significantly adversely affected or may signifi-
11 cantly adversely affect the national economy or
12 any sector thereof, including a domestic indus-
13 try; and

14 (v) monitoring or controls, or both, are
15 necessary in order to carry out the policy set
16 forth in section 103(4).

17 (B) The Secretary shall publish in the Federal
18 Register a detailed statement of the reasons for the
19 Secretary's determination under subparagraph (A)
20 of whether to impose monitoring or controls, or
21 both, including the findings of fact in support of
22 that determination.

23 (4) PUBLICATION OF REGULATIONS.—Within
24 15 days after making a determination under para-
25 graph (3) to impose monitoring or controls on the

1 export of a material, the Secretary shall publish in
2 the Federal Register proposed regulations with re-
3 spect to such monitoring or controls. Within 30 days
4 after the publication of such proposed regulations,
5 and after considering any public comments on the
6 proposed regulations, the Secretary shall publish and
7 implement final regulations with respect to such
8 monitoring or controls.

9 (5) CONSOLIDATION OF PETITIONS.—For pur-
10 poses of publishing notices in the Federal Register
11 and scheduling public hearings pursuant to this sub-
12 section, the Secretary may consolidate petitions, and
13 responses to such petitions, which involve the same
14 or related materials.

15 (6) SUBSEQUENT PETITIONS ON SAME MATE-
16 RIAL.—If a petition with respect to a particular ma-
17 terial or group of materials has been considered in
18 accordance with all the procedures described in this
19 subsection, the Secretary may determine, in the ab-
20 sence of significantly changed circumstances, that
21 any other petition with respect to the same material
22 or group of materials which is filed within 6 months
23 after the consideration of the prior petition has been
24 completed does not merit complete consideration
25 under this subsection.

1 (7) PRECEDENCE OF PROCEDURES OVER
2 OTHER REVIEWS.—The procedures and time limits
3 set forth in this subsection with respect to a petition
4 filed under this subsection shall take precedence over
5 any review undertaken at the initiative of the Sec-
6 retary with respect to the same subject as that of
7 the petition.

8 (8) TEMPORARY CONTROLS.—The Secretary
9 may impose monitoring or controls, on a temporary
10 basis, on the export of a metallic material after a pe-
11 tition is filed under paragraph (1)(A) with respect to
12 that material but before the Secretary makes a de-
13 termination under paragraph (3) with respect to
14 that material only if—

15 (A) the failure to take such temporary ac-
16 tions would result in irreparable harm to the
17 entity filing the petition, or to the national
18 economy or segment thereof, including a domes-
19 tic industry, and

20 (B) the Secretary considers such action to
21 be necessary to carry out the policy set forth in
22 section 103(4).

23 (9) OTHER AUTHORITY NOT AFFECTED.—The
24 authority under this subsection shall not be con-
25 strued to affect the authority of the Secretary under

1 any other provision of this title, except that if the
2 Secretary determines, on the Secretary's own initia-
3 tive, to impose monitoring or controls, or both, on
4 the export of metallic materials capable of being re-
5 cycled, under the authority of this section, the Sec-
6 retary shall publish the reasons for such action in
7 accordance with paragraph (3)(A) and (B).

8 (10) SUBMISSION AND CONSIDERATION OF AD-
9 DITIONAL INFORMATION.—Nothing contained in this
10 subsection shall be construed to preclude submission
11 on a confidential basis to the Secretary of informa-
12 tion relevant to a decision to impose or remove mon-
13 itoring or controls under the authority of this title,
14 or to preclude consideration of such information by
15 the Secretary in reaching decisions required under
16 this subsection. The provisions of this paragraph
17 shall not be construed to affect the applicability of
18 section 552(b) of title 5, United States Code.

19 (d) AGRICULTURAL COMMODITIES.—

20 (1) APPROVAL OF CONTROLS BY SECRETARY OF
21 AGRICULTURE.—The authority conferred by this sec-
22 tion shall not be exercised with respect to any agri-
23 cultural commodity, including fats and oils, forest
24 products, or animal hides or skins, without the ap-
25 proval of the Secretary of Agriculture. The Secretary

1 of Agriculture shall not approve the exercise of such
2 authority with respect to any such commodity during
3 any period for which the supply of such commodity
4 is determined by the Secretary of Agriculture to be
5 in excess of the requirements of the domestic econ-
6 omy, except to the extent the President determines
7 that the controls on such agricultural commodities
8 are also imposed under section 106. The Secretary
9 of Agriculture shall, by exercising the authority
10 which the Secretary of Agriculture has under other
11 applicable provisions of law, collect data with respect
12 to export sales of animal hides and skins.

13 (2) PROTECTION OF STORED COMMODITIES
14 FROM FUTURE CONTROLS.—Upon approval of the
15 Secretary, in consultation with the Secretary of Ag-
16 riculture, agricultural commodities purchased by or
17 for use in a foreign country may remain in the Unit-
18 ed States for export at a later date free from any
19 quantitative limitations on export which may be im-
20 posed to carry out the policy set forth in section
21 103(4) subsequent to such approval. The Secretary
22 may not grant such approval unless the Secretary
23 receives adequate assurance and, in conjunction with
24 the Secretary of Agriculture, finds—

1 (A) that such commodities will eventually
2 be exported,

3 (B) that neither the sale nor export thereof
4 will result in an excessive drain of scarce mate-
5 rial and have a serious domestic inflationary
6 impact,

7 (C) that storage of such commodities in
8 the United States will not unduly limit the
9 space available for storage of domestically
10 owned commodities, and

11 (D) that the purpose of such storage is to
12 establish a reserve of such commodities for later
13 use, not including resale to or use by another
14 country.

15 The Secretary may issue such regulations as may be
16 necessary to carry out this paragraph.

17 (3) PROCEDURES FOR IMPOSING CONTROLS.—

18 (A) If the President imposes export controls on any
19 agricultural commodity under section 106 or this
20 section, the President shall immediately transmit a
21 report on such action to the Congress, setting forth
22 the reasons for the controls in detail and specifying
23 the period of time, which may not exceed 1 year,
24 that the controls are proposed to be in effect. If the
25 Congress, within 60 days after the date of the re-

1 ceipt of the report, adopts a joint resolution pursu-
2 ant to paragraph (4) approving the imposition of the
3 export controls, then such controls shall remain in
4 effect for the period specified in the report, or until
5 terminated by the President, whichever occurs first.
6 If the Congress, within 60 days after the date of its
7 receipt of such report, fails to adopt a joint resolu-
8 tion approving such controls, then such controls
9 shall cease to be effective upon the expiration of that
10 60-day period.

11 (B) The provisions of subparagraph (A) and
12 paragraph (4) shall not apply to export controls—

13 (i) which are extended under this title if
14 the controls, when imposed, were approved by
15 the Congress under subparagraph (A) and
16 paragraph (4); or

17 (ii) which are imposed with respect to a
18 country as part of the prohibition or curtail-
19 ment of all exports to that country.

20 (4) EXPEDITED PROCEDURES.—(A) For pur-
21 poses of this paragraph, the term “joint resolution”
22 means only a joint resolution the matter after the
23 resolving clause of which is as follows: “That pursu-
24 ant to section 107(d)(3) of the Export Act of 1996,
25 the President may impose export controls as speci-

1 fied in the report submitted to the Congress on
2 _____.”, with the blank space being filled with the
3 appropriate date.

4 (B) On the day on which a report is submitted
5 to the House of Representatives and the Senate
6 under paragraph (3), a joint resolution with respect
7 to the export controls specified in such report shall
8 be introduced (by request) in the House by the
9 chairman of the Committee on International Rela-
10 tions, for the chairman and the ranking minority
11 member of the Committee, or by Members of the
12 House designated by the chairman and ranking mi-
13 nority member; and shall be introduced (by request)
14 in the Senate by the majority leader of the Senate,
15 for the chairman and the minority leader of the Sen-
16 ate, or by Members of the Senate designated by the
17 majority leader and minority leader of the Senate. If
18 either House is not in session on the day on which
19 such a report is submitted, the joint resolution shall
20 be introduced in that House, as provided in the pre-
21 ceding sentence, on the first day thereafter on which
22 that House is in session.

23 (C) If the committee of either House to which
24 a joint resolution has been referred has not reported
25 the joint resolution at the end of 30 days after its

1 referral, the committee shall be discharged from fur-
2 ther consideration of the resolution or of any other
3 joint resolution introduced with respect to the same
4 matter.

5 (D) A joint resolution under this paragraph
6 shall be considered in the Senate in accordance with
7 the provisions of section 601(b)(4) of the Inter-
8 national Security Assistance and Arms Export Con-
9 trol Act of 1976. For the purpose of expediting the
10 consideration and passage of joint resolutions re-
11 ported or discharged pursuant to the provisions of
12 this paragraph, it shall be in order for the Commit-
13 tee on Rules of the House of Representatives to
14 present for consideration a resolution of the House
15 of Representatives providing procedures for the im-
16 mediate consideration of a joint resolution under
17 this paragraph which may be similar, if applicable,
18 to the procedure set forth in section 601(b)(4) of the
19 International Security Assistance and Arms Export
20 Control Act of 1976.

21 (E) In the case of a joint resolution described
22 in subparagraph (A), if, before the passage by one
23 House of a joint resolution of that House, that
24 House receives a resolution with respect to the same
25 matter from the other House, then—

(i) the procedure in that House shall be the same as if no joint resolution has been received from the other House; but

(ii) the vote on final passage shall be on the joint resolution of the other House.

(5) COMPUTATION OF TIME PERIODS.—In the computation of the period of 60 days referred to in paragraph (3)(A) and the period of 30 days referred to in paragraph (4)(C), there shall be excluded the days on which either House of Congress is not in session because of an adjournment of more than 3 days to a day certain or because of an adjournment of the Congress sine die.

(e) BARTER AGREEMENTS.—

(1) EXEMPTION FROM CONTROLS.—The exportation pursuant to a barter agreement of any commodities which may lawfully be exported from the United States, for any commodities which may lawfully be imported into the United States, may be exempted, in accordance with paragraph (2), from any quantitative limitation on exports (other than any reporting requirement) imposed to carry out the policy set forth in section 103(4).

(2) CRITERIA FOR EXEMPTION.—The Secretary shall grant an exemption under paragraph (1) if the

1 Secretary finds, after consultation with the appro-
2 priate department or agency of the United States,
3 that—

4 (A) for the period during which the barter
5 agreement is to be performed—

6 (i) the average annual quantity of the
7 commodities to be exported pursuant to
8 the barter agreement will not be required
9 to satisfy the average amount of such com-
10 modities estimated to be required annually
11 by the domestic economy and will be sur-
12 plus thereto; and

13 (ii) the average annual quantity of the
14 commodities to be imported will be less
15 than the average amount of such commod-
16 ities estimated to be required annually to
17 supplement domestic production; and

18 (B) the parties to such barter agreement
19 have demonstrated adequately that they intend,
20 and have the capacity, to perform such barter
21 agreement.

22 (3) DEFINITION.—For purposes of this sub-
23 section, the term “barter agreement” means any
24 agreement which is made for the exchange, without
25 monetary consideration, of any commodities pro-

duced in the United States for any commodities produced outside of the United States.

(4) APPLICABILITY.—This subsection shall apply only with respect to barter agreements entered into after September 30, 1979.

(f) EFFECT OF CONTROLS ON EXISTING CON-TRACTS.—

(1) WESTERN RED CEDAR.—Any export controls imposed under section 7(i) of the Export Administration Act of 1979 or this section shall not affect any contract to harvest unprocessed western red cedar from State lands which was entered into before October 1, 1979, and the performance of which would make the red cedar available for export.

(2) OTHER CONTROLS.—Any export controls imposed under this section on any agricultural commodity (including fats, oils, forest products, and animal hides and skins), or on any fishery product, shall not affect any contract to export entered into before the date on which such controls are imposed. For purposes of this paragraph, the term “contract to export” includes, but is not limited to, an export sales agreement and an agreement to invest in an enterprise which involves the export of commodities or technology.

1 (g) OIL EXPORTS FOR USE BY UNITED STATES
2 MILITARY FACILITIES.—For purposes of this section, and
3 for purposes of any export controls imposed under this
4 title, shipments of crude oil, refined petroleum products,
5 or partially refined petroleum products from the United
6 States for use by the Department of Defense or United
7 States-supported installations or facilities shall not be con-
8 sidered to be exports.

9 SEC. 108. FOREIGN BOYCOTTS.

10 (a) PROHIBITIONS AND EXCEPTIONS.—

11 (1) PROHIBITIONS.—In order to carry out the
12 policies set forth in section 103(9), the President
13 shall issue regulations prohibiting any United States
14 person, with respect to that person's activities in the
15 interstate or foreign commerce of the United States,
16 from taking or knowingly agreeing to take any of
17 the following actions with intent to comply with, fur-
18 ther, or support any boycott fostered or imposed by
19 a foreign country against a country which is friendly
20 to the United States and which is not itself the ob-
21 ject of any form of boycott pursuant to United
22 States law or regulation:

23 (A) Refusing, or requiring any other per-
24 son to refuse, to do business with or in the boy-
25 cotted country, with any business concern orga-

1 nized under the laws of the boycotted country,
2 with any national or resident of the boycotted
3 country, or with any other person, pursuant to
4 an agreement with, a requirement of, or a re-
5 quest from or on behalf of the boycotting coun-
6 try. The mere absence of a business relationship
7 with or in the boycotted country, with any busi-
8 ness concern organized under the laws of the
9 boycotted country, with any national or resident
10 of the boycotted country, or with any other per-
11 son, does not indicate the existence of the in-
12 tent required to establish a violation of regula-
13 tions issued to carry out this subparagraph.

14 (B) Refusing, or requiring any other per-
15 son to refuse, to employ or otherwise discrimi-
16 nating against any United States person on the
17 basis of the race, religion, sex, or national ori-
18 gin of that person or of any owner, officer, di-
19 rector, or employee of such person.

20 (C) Furnishing information with respect to
21 the race, religion, sex, or national origin of any
22 United States person or of any owner, officer,
23 director, or employee of such person.

24 (D) Furnishing information about whether
25 any person has, has had, or proposes to have

1 any business relationship (including a relation-
2 ship by way of sale, purchase, legal or commer-
3 cial representation, shipping or other transport,
4 insurance, investment, or supply) with or in the
5 boycotted country, with any business concern
6 organized under the laws of the boycotted coun-
7 try, with any national or resident of the boy-
8 cotted country, or with any other person that is
9 known or believed to be restricted from having
10 any business relationship with or in the boycott-
11 ing country. Nothing in this paragraph shall
12 prohibit the furnishing of normal business in-
13 formation in a commercial context as defined by
14 the Secretary.

15 (E) Furnishing information about whether
16 any person is a member of, has made a con-
17 tribution to, or is otherwise associated with or
18 involved in the activities of any charitable or
19 fraternal organization which supports the boy-
20 cotted country.

21 (F) Paying, honoring, confirming, or other-
22 wise implementing a letter of credit which con-
23 tains any condition or requirement compliance
24 with which is prohibited by regulations issued
25 pursuant to this paragraph, and no United

1 States person shall, as a result of the applica-
2 tion of this paragraph, be obligated to pay or
3 otherwise honor or implement such letter of
4 credit.

5 (2) EXCEPTIONS.—Regulations issued pursuant
6 to paragraph (1) shall provide exceptions for—

7 (A) complying or agreeing to comply with
8 requirements—

9 (i) prohibiting the import of commod-
10 ities or services from the boycotted country
11 or commodities produced or services pro-
12 vided by any business concern organized
13 under the laws of the boycotted country or
14 by nationals or residents of the boycotted
15 country; or

16 (ii) prohibiting the shipment of com-
17 modities to the boycotting country on a
18 carrier of the boycotted country, or by a
19 route other than that prescribed by the
20 boycotting country or the recipient of the
21 shipment;

22 (B) complying or agreeing to comply with
23 import and shipping document requirements
24 with respect to the country of origin, the name
25 of the carrier and route of shipment, the name

1 of the supplier of the shipment, or the name of
2 the provider of other services, except that no in-
3 formation knowingly furnished or conveyed in
4 response to such requirements may be stated in
5 negative, blacklisting, or similar exclusionary
6 terms, other than with respect to carriers or
7 route of shipment as may be permitted by such
8 regulations in order to comply with precaution-
9 ary requirements protecting against war risks
10 and confiscation;

11 (C) complying or agreeing to comply in the
12 normal course of business with the unilateral
13 and specific selection by a boycotting country,
14 or national or resident thereof, of carriers, in-
15 surers, suppliers of services to be performed
16 within the boycotting country, or specific com-
17 modities which, in the normal course of busi-
18 ness, are identifiable by source when imported
19 into the boycotting country;

20 (D) complying or agreeing to comply with
21 export requirements of the boycotting country
22 relating to shipments or transshipment of ex-
23 ports to the boycotted country, to any business
24 concern of or organized under the laws of the

1 boycotted country, or to any national or resi-
2 dent of the boycotted country;

3 (E) compliance by an individual or agree-
4 ment by an individual to comply with the immi-
5 gration or passport requirements of any country
6 with respect to such individual or any member
7 of such individual's family or with requests for
8 information regarding requirements of employ-
9 ment of such individual within the boycotting
10 country; and

11 (F) compliance by a United States person
12 resident in a foreign country or agreement by
13 such person to comply with the laws of the
14 country with respect to such person's activities
15 exclusively therein, and such regulations may
16 contain exceptions for such resident complying
17 with the laws or regulations of the foreign coun-
18 try governing imports into such country of
19 trademarked, trade named, or similarly specifi-
20 cally identifiable products, or components of
21 products for such person's own use, including
22 the performance of contractual services within
23 that country, as may be defined by such regula-
24 tions.

1 (3) LIMITATION ON EXCEPTIONS.—Regulations
2 issued pursuant to paragraphs (2)(C) and (2)(F)
3 shall not provide exceptions from paragraphs (1)(B)
4 and (1)(C).

5 (4) ANTITRUST AND CIVIL RIGHTS LAWS NOT
6 AFFECTED.—Nothing in the subsection may be con-
7 strued to supersede or limit the operation of the
8 antitrust or civil rights laws of the United States.

9 (5) EVASION.—This section shall apply to any
10 transaction or activity undertaken, by or through a
11 United States person or any other person, with in-
12 tent to evade the provisions of this section as imple-
13 mented by the regulations issued pursuant to this
14 subsection, and such regulations shall expressly pro-
15 vide that the exceptions set forth in paragraph (2)
16 shall not permit activities or agreements (expressed
17 or implied by a course of conduct, including a pat-
18 tern of responses) otherwise prohibited, which are
19 not within the intent of such exceptions.

20 (b) ADDITIONAL REGULATIONS AND REPORTS.—

21 (1) REGULATIONS.—In addition to the regula-
22 tions issued pursuant to subsection (a), regulations
23 issued under section 106 shall implement the policies
24 set forth in section 103(9).

(2) REPORTS BY UNITED STATES PERSONS.—

Such regulations shall require that any United States person receiving a request for the furnishing of information, the entering into or implementing of agreements, or the taking of any other action referred to in section 103(9) shall report that fact to the Secretary, together with such other information concerning such request as the Secretary may require, for such action as the Secretary considers appropriate for carrying out the policies of that section. Such person shall also report to the Secretary whether such person intends to comply and whether such person has complied with such request. Any report filed pursuant to this paragraph shall be made available promptly for public inspection and copying, except that information regarding the quantity, description, and value of any commodities or technology to which such report relates may be kept confidential if the Secretary determines that disclosure thereof would place the United States person involved at a competitive disadvantage. The Secretary shall periodically transmit summaries of the information contained in such reports to the Secretary of State for such action as the Secretary of State, in consultation with the Secretary, considers appro-

1 receiving the application, issue a license or no-
2 tify the applicant of the intent to deny the ap-
3 plication; or

4 (B) if referral of the application to other
5 departments or agencies for review is required,
6 the Secretary shall, within 30 days after refer-
7 ral of any such application to other depart-
8 ments or agencies—

9 (i) issue a license;

10 (ii) notify the applicant of the intent
11 to deny the application; or

12 (iii) ensure that the application is sub-
13 ject to the interagency resolution process
14 set forth in subsection (d).

15 (2) RECOMMENDATIONS OF OTHER AGEN-
16 CIES.—The Secretary shall seek information and
17 recommendations from the Department of Defense
18 and other departments and agencies of the United
19 States that are concerned with factors having an im-
20 portant bearing on exports administered under this
21 title. Such departments and agencies shall cooperate
22 fully and promptly in rendering information and rec-
23 ommendations.

24 (3) PROCEDURES.—In guidance and regulations
25 that implement this section, the Secretary shall de-

1 scribe the procedures required by this section, the
2 responsibilities of the Secretary and of other depart-
3 ments and agencies in reviewing applications, the
4 rights of the applicant, and other relevant matters
5 affecting the review of license applications.

6 (4) CALCULATION OF PROCESSING TIMES.—In
7 calculating the processing times set forth in this sec-
8 tion, the Secretary shall use calendar days, except
9 that if the final day for a required action falls on a
10 weekend or holiday, that action shall be taken no
11 later than the following business day.

12 (5) RELIABILITY OF PARTIES.—In reviewing
13 applications for export licenses, the Secretary may in
14 each case consider the reliability of the parties to the
15 proposed export. In making such an evaluation, the
16 Secretary may consider all sources of information,
17 including intelligence information, except that the
18 consideration of intelligence information in connec-
19 tion with the evaluation of the reliability of parties
20 shall not authorize the direct or indirect disclosure
21 of classified information or sources and methods of
22 gathering classified information and shall not confer
23 a right on private parties to have access to classified
24 information.

25 (b) INITIAL SCREENING.—

1 (1) UPON RECEIPT OF APPLICATION.—Upon re-
2 ceipt of an export license application, the Secretary
3 shall enter and maintain in the records of the De-
4 partment of Commerce information regarding the re-
5 ceipt and status of the application.

6 (2) INITIAL PROCEDURES.—Promptly upon re-
7 ceiving any license application, the Secretary shall—

8 (A) contact the applicant if the application
9 is improperly completed or if additional infor-
10 mation is required, and hold the application for
11 a reasonable time while the applicant provides
12 the necessary corrections or information, and
13 such time shall not be included in calculating
14 the time periods prescribed in this section;

15 (B) refer the application, including all in-
16 formation submitted by the applicant, and all
17 necessary recommendations and analyses by the
18 Secretary to the Department of Defense and
19 other departments and agencies identified by
20 the President; and

21 (C) ensure that the classification stated on
22 the application for the export items is correct,
23 return the application if a license is not re-
24 quired, and, if referral to other departments or
25 agencies is not required, grant the application

1 or notify the applicant of the Secretary's intent
2 to deny the application.

3 In the event that the head of a department or agen-
4 cy determines that certain types of applications need
5 not be referred to the department or agency, such
6 department or agency head shall notify the Sec-
7 retary of the specific types of such applications that
8 the department or agency does not wish to review.

9 (c) ACTION BY OTHER DEPARTMENTS AND AGEN-
10 CIES.—

11 (1) REFERRAL TO OTHER AGENCIES.—The Sec-
12 retary shall promptly refer license applications to de-
13 partments and agencies under subsection (b) to
14 make recommendations and provide information to
15 the Secretary.

16 (2) RESPONSIBILITY OF REFERRAL AGEN-
17 CIES.—The Department of Defense and other re-
18 viewing departments and agencies shall organize
19 their resources and units to plan for the prompt and
20 expeditious internal dissemination of export license
21 applications, if necessary, so as to avoid delays in re-
22 sponding to the referral of applications.

23 (3) ADDITIONAL INFORMATION REQUESTS.—
24 Each department or agency to which a license appli-
25 cation is referred shall specify to the Secretary any

1 information that is not in the application that would
2 be required for the department or agency to make
3 a determination with respect to the application, and
4 the Secretary shall promptly request such informa-
5 tion from the applicant. The time that may elapse
6 between the date the information is requested by
7 that department or agency and the date the infor-
8 mation is received by that department or agency
9 shall not be included in calculating the time periods
10 prescribed in this section.

11 (4) TIME PERIOD FOR ACTION BY REFERRAL
12 DEPARTMENTS AND AGENCIES.—Within 30 days
13 after receiving a referral of an application under this
14 section, the department or agency concerned shall
15 provide the Secretary with a recommendation either
16 to approve the license or to deny the license. A rec-
17 ommendation that the Secretary deny a license shall
18 include a statement of reasons for the recommenda-
19 tion that are consistent with the provisions of this
20 title, and shall cite both the specific statutory and
21 the regulatory basis for the recommendation. A de-
22 partment or agency that fails to provide a rec-
23 ommendation in accordance with this paragraph
24 within that 30-day period shall be deemed to have

1 no objection to the decision of the Secretary on the
2 application.

3 (d) INTERAGENCY RESOLUTION.—

4 (1) INITIAL RESOLUTION.—The Secretary shall
5 establish, select the chairperson of, and determine
6 procedures for an interagency committee to review
7 initially all license applications on which the depart-
8 ments and agencies reviewing the applications under
9 this section are not in agreement. The chairperson
10 of such committee shall consider the recommendations
11 of the departments and agencies reviewing a
12 particular application and inform them of his or her
13 decision on the application, which may include a de-
14 cision that the particular application requires further
15 consideration under the procedures established
16 under paragraph (2). An application may also be re-
17 ferred to further consideration under the procedures
18 established under paragraph (2) if an appeal from
19 the chairperson's decision is made in writing by an
20 official of the department or agency concerned who
21 is appointed by the President by and with the advice
22 and consent of the Senate, or an officer properly
23 acting in such capacity.

24 (2) FURTHER RESOLUTION.—The President
25 shall establish a process for the further review and

determination of export license applications pursuant to a decision by the chairperson under paragraph (1) or an appeal by a department or agency under paragraph (1). Such process shall—

(A) be chaired by the Secretary or his or her designee;

(B) ensure that license applications are resolved or referred to the President no later than 90 days after the date the license application is initially received by the Secretary;

(C) provide that a department or agency dissenting from the decision reached under subparagraph (B) may appeal the decision to the President; and

(D) provide that a department or agency that fails to take a timely position, citing the specific statutory and regulatory bases for a denial, shall be deemed to have no objection to the pending decision.

(e) ACTIONS BY THE SECRETARY.—

(1) IF NO REFERRAL.—When no referral of a license application to other departments or agencies is required, the Secretary shall issue a license or notify the applicant of the intent to deny within 9 days after receiving the application.

1 (2) IF APPLICATION DENIED.—In cases where
2 the Secretary has determined that an application
3 should be denied, or conditions imposed on the ap-
4 proval of an application, the applicant shall be in-
5 formed in writing of—

6 (A) the determination to deny;

7 (B) the specific statutory and regulatory
8 bases for the proposed denial;

9 (C) what, if any, modifications in or re-
10 strictions on the items for which the license was
11 sought would allow such export to be compat-
12 ible with export controls imposed under this
13 title, and which officer or employee of the De-
14 partment of Commerce would be in a position
15 to discuss modifications or restrictions with the
16 applicant and the specific statutory and regu-
17 latory bases for imposing such modifications or
18 restrictions;

19 (D) to the extent consistent with the na-
20 tional security and foreign policy of the United
21 States, the specific considerations that led to
22 the determination to deny the application; and

23 (E) the availability of appeal procedures.

1 The Secretary shall allow the applicant 20 days to
2 respond to the determination before the license ap-
3 plication is denied.

4 (f) EXCEPTIONS FROM REQUIRED TIME PERIODS.—

5 The following actions related to processing an application
6 shall not be included in calculating the time periods pre-
7 scribed in this section:

8 (1) AGREEMENT OF THE APPLICANT.—Delays
9 upon which the Secretary and the applicant mutu-
10 ally agree.

11 (2) PRELICENSE CHECKS.—A prelicense check
12 that may be required to establish the identity and
13 reliability of the recipient of items controlled under
14 this title, if—

15 (A) the need for the prelicense check is es-
16 tablished by the Secretary, or by another de-
17 partment or agency if the request for the
18 prelicense check is made by such department or
19 agency;

20 (B) the request for the prelicense check is
21 sent by the Secretary within 5 days after the
22 determination that the prelicense check is re-
23 quired; and

1 (C) the analysis of the result of the
2 prelicense check is completed by the Secretary
3 within 5 days.

4 (3) REQUESTS FOR GOVERNMENT-TO-GOVERN-
5 MENT ASSURANCES.—Any request by the Secretary
6 or another department or agency for government-to-
7 government assurances of suitable end uses of items
8 approved for export, when failure to obtain such as-
9 surances would result in rejection of the application,
10 if—

11 (A) the request for such assurances is sent
12 to the Secretary of State within 5 days after
13 the determination that the assurances are re-
14 quired;

15 (B) the Secretary of State initiates the re-
16 quest of the relevant government within 10
17 days thereafter; and

18 (C) the license is issued within 5 days
19 after the Secretary receives the requested assur-
20 ances.

21 Whenever a prelicense check described in paragraph
22 (2) and assurances described in this paragraph are
23 not requested within the time periods set forth
24 therein, then the time expended for such prelicense

1 check or assurances shall be included in calculating
2 the time periods established by this section.

3 (4) MULTILATERAL REVIEW.—Multilateral re-
4 view of a license application to the extent that such
5 multilateral review is required by a relevant multilat-
6 eral regime.

7 (5) CONGRESSIONAL NOTIFICATION.—Such
8 time as is required for mandatory congressional noti-
9 fications under this title.

10 (6) CONSULTATIONS.—Consultation with other
11 governments, if such consultation is provided for by
12 a relevant multilateral regime as a precondition for
13 approving a license.

14 (g) APPEALS.—

15 (1) IN GENERAL.—The Secretary shall establish
16 appropriate procedures for any applicant to appeal
17 to the Secretary the denial of an export license ap-
18 plication or other administrative action under this
19 title.

20 (2) FILING OF PETITION.—In any case in which
21 any action prescribed in this section is not taken on
22 a license application within the time periods estab-
23 lished by this section (except in the case of a time
24 period extended under subsection (f)(4) of which the
25 applicant is notified), the applicant may file a peti-

1 tion with the Secretary requesting compliance with
2 the requirements of this section. When such petition
3 is filed, the Secretary shall take immediate steps to
4 correct the situation giving rise to the petition and
5 shall immediately notify the applicant of such steps.

6 (3) BRINGING COURT ACTION.—If, within 20
7 days after a petition is filed under paragraph (2),
8 the processing of the application has not been
9 brought into conformity with the requirements of
10 this section, or the application has been brought into
11 conformity with such requirements but the Secretary
12 has not so notified the applicant, the applicant may
13 bring an action in an appropriate United States dis-
14 trict court for an order requiring compliance with
15 the time periods required by this section. The Unit-
16 ed States district courts shall have jurisdiction to
17 provide such relief, as appropriate.

18 (h) CLASSIFICATION REQUESTS AND OTHER INQUIR-
19 IES.—

20 (1) CLASSIFICATION REQUESTS.—In any case
21 in which the Secretary receives a written request
22 asking for the proper classification of an item on the
23 control index, the Secretary shall, within 14 days
24 after receiving the request, inform the person mak-
25 ing the request of the proper classification.

(2) OTHER INQUIRIES.—In any case in which the Secretary receives a written request for information about the applicability of licensing requirements under this title to a proposed export transaction or series of transactions, the Secretary shall, within 30 days after receiving the request, reply with that information to the person making the request.

SEC. 110. VIOLATIONS.

(a) CRIMINAL PENALTIES.—

(1) VIOLATIONS BY AN INDIVIDUAL.—Except as provided in paragraph (3), any individual who knowingly violates or conspires to or attempts to violate any provision of this title or any regulation, license, or order issued under this title shall be fined not more than 5 times the value of the exports involved or \$500,000, whichever is greater, or imprisoned not more than 10 years, or both.

(2) VIOLATIONS BY A PERSON OTHER THAN AN INDIVIDUAL.—Except as provided in paragraph (3), any person other than an individual who knowingly violates or conspires to or attempts to violate any provision of this title or any regulation, license, or order issued under this title shall be fined not more than 10 times the value of the exports involved or \$1,000,000, whichever is greater.

1 (3) ANTIBOYCOTT VIOLATIONS.—

2 (A) Any individual who knowingly violates
3 or conspires to or attempts to violate any provi-
4 sion of section 108 or any regulation or order
5 issued thereunder shall be fined, for each viola-
6 tion, not more than 5 times the value of the ex-
7 ports involved or \$250,000, whichever is great-
8 er, or imprisoned not more than 10 years, or
9 both.

10 (B) Any person other than an individual
11 who knowingly violates or conspires to or at-
12 tempts to violate any provision of section 108
13 or any regulation or order issued thereunder
14 shall be fined, for each violation, not more than
15 5 times the value of the exports involved or
16 \$500,000, whichever is greater.

17 (b) FORFEITURE OF PROPERTY INTEREST AND PRO-
18 CEEDS.—

19 (1) FORFEITURE.—Any person who is convicted
20 under subsection (a)(1) or (2) shall, in addition to
21 any other penalty, forfeit to the United States—

22 (A) any of that person's interest in, secu-
23 rity of, claim against, or property or contractual
24 rights of any kind in the commodities or tan-

1 gible items that were the subject of the viola-
2 tion;

3 (B) any of that person's interest in, secu-
4 rity of, claim against, or property or contractual
5 rights of any kind in tangible property that was
6 used in the export or attempt to export that
7 was the subject of the violation; and

8 (C) any of that person's property con-
9 stituting, or derived from, any proceeds ob-
10 tained directly or indirectly as a result of the
11 violation.

12 (2) PROCEDURES.—The procedures in any for-
13 feiture under this subsection, and the duties and au-
14 thority of the courts of the United States and the
15 Attorney General with respect to any forfeiture ac-
16 tion under this subsection or with respect to any
17 property that may be subject to forfeiture under this
18 subsection, shall be governed by the provisions of
19 chapter 46 of title 18, United States Code, to the
20 same extent as property subject to forfeiture under
21 that chapter.

22 (c) CIVIL PENALTIES; ADMINISTRATIVE SANC-
23 TIONS.—

24 (1) CIVIL PENALTIES.—The Secretary may im-
25 pose a civil penalty of not more than \$250,000 for

1 each violation of this title or any regulation, license,
2 or order issued under this title, either in addition to
3 or in lieu of any other liability or penalty which may
4 be imposed, except that the civil penalty for each
5 such violation of regulations issued under section
6 108 may not exceed \$50,000.

7 (2) DENIAL OF EXPORT PRIVILEGES.—The Sec-
8 retary may deny the export privileges of any person,
9 including suspending or revoking the authority of
10 any person to export or receive United States-origin
11 commodities or technology subject to this title, on
12 account of any violation of this title or any regula-
13 tion, license, or order issued under this title.

14 (d) PAYMENT OF CIVIL PENALTIES.—The payment
15 of any civil penalty imposed under subsection (c) may be
16 made a condition, for a period not exceeding 1 year after
17 the penalty has become due but has not been paid, to the
18 granting, restoration, or continuing validity of any export
19 license, permission, or privilege granted or to be granted
20 to the person upon whom such penalty is imposed. In addi-
21 tion, the payment of any civil penalty imposed under sub-
22 section (c) may be deferred or suspended in whole or in
23 part for a period of time no longer than any probation
24 period (which may exceed 1 year) that may be imposed
25 upon such person. Such deferral or suspension shall not

1 operate as a bar to the collection of the penalty in the
2 event that the conditions of the suspension, deferral, or
3 probation are not fulfilled.

4 (e) REFUNDS.—Any amount paid in satisfaction of
5 any civil penalty imposed under subsection (c) shall be cov-
6 ered into the Treasury as a miscellaneous receipt. The
7 head of the department or agency concerned may, in his
8 or her discretion, refund any such civil penalty imposed
9 under subsection (c), within 2 years after payment, on the
10 ground of a material error of fact or law in the imposition
11 of the penalty. Notwithstanding section 1346(a) of title
12 28, United States Code, no action for the refund of any
13 such penalty may be maintained in any court.

14 (f) EFFECT OF OTHER CONVICTIONS.—

15 (1) DENIAL OF EXPORT PRIVILEGES.—Any per-
16 son convicted of a violation of—

17 (A) this title or the Export Administration
18 Act of 1979,

19 (B) the International Emergency Economic
20 Powers Act,

21 (C) section 793, 794, or 798 of title 18,
22 United States Code,

23 (D) section 4(b) of the Internal Security
24 Act of 1950 (50 U.S.C. 783(b)),

1 (E) section 38 of the Arms Export Control
2 Act,

3 (F) section 16 of the Trading with the
4 Enemy Act (59 U.S.C. App. 16),

5 (G) any regulation, license, or order issued
6 under any provision of law listed in subpara-
7 graph (A), (B), (C), (D), (E), or (F), or

8 (H) section 371 or 1001 of title 18, United
9 States Code, if in connection with the export of
10 commodities or technology controlled under this
11 title, any regulation, license or order issued
12 under the International Emergency Economic
13 Powers Act, or defense articles or defense serv-
14 ices controlled under the Arms Export Control
15 Act,

16 may, at the discretion of the Secretary, be denied ex-
17 port privileges under this title for a period of up to
18 10 years from the date of the conviction. The Sec-
19 retary may also revoke any export license under this
20 title in which such person had an interest at the
21 time of the conviction.

22 (2) RELATED PERSONS.—The Secretary may
23 exercise the authority under paragraph (1) with re-
24 spect to any person related, through affiliation, own-
25 ership, control, or position of responsibility, to any

1 person convicted of any violation of a law set forth
2 in paragraph (1), upon a showing of such relation-
3 ship with the convicted person, after providing notice
4 and opportunity for a hearing.

5 (g) STATUTE OF LIMITATIONS.—Any proceeding in
6 which a civil penalty or other administrative sanction
7 (other than a temporary denial order) is sought under sub-
8 section (c) may not be instituted more than 5 years after
9 the date of the alleged violation, except that, in any case
10 in which a criminal indictment alleging a violation of this
11 title is returned within the time limits prescribed by law
12 for the institution of such action, the statute of limitations
13 for bringing a proceeding to impose such a civil penalty
14 or other administrative sanction under this title shall,
15 upon the return of the criminal indictment, be tolled
16 against all persons named as a defendant. The tolling of
17 the statute of limitations shall continue for a period of
18 6 months from the date a conviction becomes final or the
19 indictment is dismissed.

20 (h) VIOLATIONS DEFINED BY REGULATION.—Noth-
21 ing in this section shall limit the power of the Secretary
22 to define by regulation violations under this title.

23 (i) OTHER AUTHORITIES.—Nothing in subsection
24 (c), (d), (e), (f), or (g) limits—

1 (1) the availability of other administrative or
2 judicial remedies with respect to violations of this
3 title, or any regulation, order, or license issued
4 under this title;

5 (2) the authority to compromise and settle ad-
6 ministrative proceedings brought with respect to any
7 such violation; or

8 (3) the authority to compromise, remit, or miti-
9 gate seizures and forfeitures pursuant to section
10 1(b) of title VI of the Act of June 15, 1917 (22
11 U.S.C. 401(b)).

12 (j) PRIVATE RIGHT OF ACTION.—Any person—

13 (1) against whom an act of discrimination de-
14 scribed in section 108(a)(1)(B) is committed, or

15 (2) who, on account of a violation of the regula-
16 tions issued pursuant to section 108(a), loses an op-
17 portunity to engage in a commercial venture pursu-
18 ant to a contract, joint venture, or other commercial
19 transaction, including an opportunity to bid or ten-
20 der an offer for a contract,

21 may bring an action in an appropriate district court of
22 the United States against the United States person com-
23 mitting the violation, for recovery of actual damages in-
24 curred on account of such act of discrimination or lost
25 opportunity. In any such action the court may award puni-

1 tive damages. An action may be brought under this sub-
2 section against a United States person whether or not the
3 United States person has been determined under this sec-
4 tion to have violated the regulations issued pursuant to
5 section 108(a) on account of which the action is brought.

6 **SEC. 111. CONTROLLING PROLIFERATION ACTIVITY.**

7 (a) **PROLIFERATION CONTROLS.**—

8 (1) **MISSILE TECHNOLOGY CONTROLS.**—The
9 Secretary, in consultation with the Secretary of De-
10 fense and the heads of other appropriate depart-
11 ments and agencies and consistent with sections 103
12 and 104(g)—

13 (A) shall establish and maintain, as part of
14 the control index established under section
15 104(b), dual-use items on the MTCR Annex;

16 (B) may include, as part of the control
17 index established under section 104(b), items
18 that—

19 (i) would provide a material contribu-
20 tion to the design, development, test, pro-
21 duction, stockpiling, or use of missile deliv-
22 ery systems, and

23 (ii) are not included in the MTCR
24 Annex but which the United States has
25 proposed to the other members of the

1 MTCR for inclusion in the MTCR Annex;
2 and

3 (C) shall require a license under paragraph
4 (1) or (2) of section 104(a), consistent with the
5 arrangements of the MTCR, for—

6 (i) any export of items on the control
7 index pursuant to subparagraphs (A) and
8 (B) to any country; and

9 (ii) any export of items that the ex-
10 porter knows is destined for a project or
11 facility for the design, development, or
12 manufacture of a missile in a country that
13 is not an adherent to the MTCR.

14 (2) CHEMICAL AND BIOLOGICAL WEAPONS CON-
15 TROLS.—The Secretary, in consultation with the
16 Secretary of Defense and the heads of other appro-
17 priate departments and agencies and consistent with
18 sections 103 and 104(g)—

19 (A) shall establish and maintain, as part of
20 the control index established under section
21 104(b), dual-use items listed by the Australia
22 Group or the Chemical Weapons Convention;

23 (B) may include, as part of the control
24 index established under section 104(b), items
25 that—

(i) would provide a material contribution to the design, development, test, production, stockpiling, or use of chemical or biological weapons, and

(ii) are not contained on the lists of the Australia Group but which the United States has proposed to the other members of the Australia Group for inclusion in its list of controlled items; and

(C) shall require a license under paragraph (1) or (2) of section 104(a), consistent with the arrangements of the Australia Group and the Chemical Weapons Convention, for—

(i) any export of items on the control index pursuant to subparagraphs (A) and (B) to any country, except as provided for in section 105(e); and

(ii) any export of items that the exporter knows is destined for a project or facility for the design, development, or manufacture of a chemical or biological weapon.

(3) POLICY OF DENIAL OF LICENSES.—(A) Licenses under paragraph (1)(C) should in general be denied if the ultimate consignee of the commodities

1 or technology is a facility in a country that is not
2 an adherent to the MTCR and the facility is de-
3 signed to develop or build missiles.

4 (B) Licenses under paragraph (1)(C) shall be
5 denied if the ultimate consignee of the commodities
6 or technology is a facility in a country the govern-
7 ment of which has been determined under section
8 106(i)(1) to have repeatedly provided support for
9 acts of international terrorism.

10 (b) TECHNICAL AMENDMENTS TO ARMS EXPORT
11 CONTROL ACT.—(1) Section 71(a) of the Arms Export
12 Control Act (22 U.S.C. 2797(a)) is amended by striking
13 “6(l) of the Export Administration Act of 1979” and in-
14 serting “111(a) of the Export Act of 1996”.

15 (2) Section 81(a)(1) of the Arms Export Control Act
16 (22 U.S.C. 2798(a)(1)) is amended in subparagraphs (A)
17 and (B) by inserting “under this Act” after “United
18 States”.

19 (c) GENERAL PROHIBITION.—Notwithstanding any
20 other provision of this title, the export of commodities or
21 technology shall be prohibited, if the ultimate consignee
22 is a program or activity for the design, development, man-
23 ufacture, stockpiling, testing, or other acquisition of a
24 weapon of mass destruction or missile in a country that
25 is not an adherent to the regime controlling such weapon

1 or missile, unless the Secretary determines such export
2 would not make a material contribution to such program
3 or activity.

4 (d) CHEMICAL AND BIOLOGICAL WEAPONS PRO-
5 LIFERATION SANCTIONS.—

6 (1) IMPOSITION OF SANCTIONS.—

7 (A) DETERMINATION BY THE PRESI-
8 DENT.—Except as provided in paragraph
9 (2)(B), the President shall impose both of the
10 sanctions described in paragraph (3) if the
11 President determines that a foreign person, on
12 or after the date of the enactment of this Act,
13 has knowingly and materially contributed—

14 (i) through the export from the Unit-
15 ed States of any goods or technology that
16 are subject to the jurisdiction of the Unit-
17 ed States under this title, or

18 (ii) through the export from any other
19 country of any goods or technology that
20 would be, if they were United States goods
21 or technology, subject to the jurisdiction of
22 the United States under this title,

23 to the efforts by any foreign country, project, or
24 entity described in subparagraph (B) to use, de-

1 develop, produce, stockpile, or otherwise acquire
2 chemical or biological weapons.

3 (B) COUNTRIES, PROJECTS, OR ENTITIES
4 RECEIVING ASSISTANCE.—Subparagraph (A)
5 applies in the case of—

6 (i) any foreign country that the Presi-
7 dent determines has, at any time after
8 January 1, 1980—

9 (I) used chemical or biological
10 weapons in violation of international
11 law;

12 (II) used lethal chemical or bio-
13 logical weapons against its own na-
14 tionals; or

15 (III) made substantial prepara-
16 tions to engage in the activities de-
17 scribed in subclause (I) or (II);

18 (ii) any foreign country whose govern-
19 ment is determined for purposes of section
20 106(i) to be a government that has repeat-
21 edly provided support for acts of inter-
22 national terrorism; or

23 (iii) any other foreign country,
24 project, or entity designated by the Presi-
25 dent for purposes of this subsection.

1 (C) PERSONS AGAINST WHICH SANCTIONS
2 ARE TO BE IMPOSED.—Sanctions shall be im-
3 posed pursuant to subparagraph (A) on—

4 (i) the foreign person with respect to
5 which the President makes the determina-
6 tion described in that subparagraph;

7 (ii) any successor entity to that for-
8 eign person;

9 (iii) any foreign person that is a par-
10 ent or subsidiary of that foreign person if
11 that parent or subsidiary knowingly as-
12 sisted in the activities which were the basis
13 of that determination; and

14 (iv) any foreign person that is an af-
15 filiate of that foreign person if that affili-
16 ate knowingly assisted in the activities
17 which were the basis of that determination
18 and if that affiliate is controlled in fact by
19 that foreign person.

20 (2) CONSULTATIONS WITH AND ACTIONS BY
21 FOREIGN GOVERNMENT OF JURISDICTION.—

22 (A) CONSULTATIONS.—If the President
23 makes the determinations described in para-
24 graph (1)(A) with respect to a foreign person,
25 the Congress urges the President to initiate

1 consultations immediately with the government
2 with primary jurisdiction over that foreign per-
3 son with respect to the imposition of sanctions
4 pursuant to this subsection.

5 (B) ACTIONS BY GOVERNMENT OF JURIS-
6 DICTION.—In order to pursue such consulta-
7 tions with that government, the President may
8 delay imposition of sanctions pursuant to this
9 subsection for a period of up to 90 days. Fol-
10 lowing these consultations, the President shall
11 impose sanctions unless the President deter-
12 mines and certifies to the Congress that that
13 government has taken specific and effective ac-
14 tions, including appropriate penalties, to termi-
15 nate the involvement of the foreign person in
16 the activities described in paragraph (1)(A).
17 The President may delay imposition of sanc-
18 tions for an additional period of up to 90 days
19 if the President determines and certifies to the
20 Congress that that government is in the process
21 of taking the actions described in the preceding
22 sentence.

23 (C) REPORT TO CONGRESS.—The Presi-
24 dent shall report to the Congress, not later than
25 90 days after making a determination under

1 paragraph (1)(A), on the status of consultations
2 with the appropriate government under this
3 subsection, and the basis for any determination
4 under subparagraph (B) of this paragraph that
5 such government has taken specific corrective
6 actions.

7 (3) SANCTIONS.—

8 (A) DESCRIPTION OF SANCTIONS.—The
9 sanctions to be imposed pursuant to paragraph
10 (1)(A) are, except as provided in subparagraph
11 (B) of this paragraph, the following:

12 (i) PROCUREMENT SANCTION.—The
13 United States Government shall not pro-
14 cure, or enter into any contract for the
15 procurement of, any goods or services from
16 any person described in paragraph (1)(C).

17 (ii) IMPORT SANCTIONS.—The impor-
18 tation into the United States of products
19 produced by any person described in para-
20 graph (1)(C) shall be prohibited.

21 (B) EXCEPTIONS.—The President shall
22 not be required to apply or maintain sanctions
23 under this subsection—

24 (i) in the case of procurement of de-
25 fense articles or defense services—

1 (I) under existing contracts or
2 subcontracts, including the exercise of
3 options for production quantities to
4 satisfy United States operational mili-
5 tary requirements;

6 (II) if the President determines
7 that the person or other entity to
8 which the sanctions would otherwise
9 be applied is a sole source supplier of
10 the defense articles or services, that
11 the defense articles or services are es-
12 sential, and that alternative sources
13 are not readily or reasonably avail-
14 able; or

15 (III) if the President determines
16 that such articles or services are es-
17 sential to the national security under
18 defense coproduction agreements;

19 (ii) to products or services provided
20 under contracts entered into before the
21 date on which the President publishes his
22 intention to impose sanctions;

23 (iii) to—

24 (I) spare parts,

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1 (II) component parts, but not
2 finished products, essential to United
3 States products or production, or

4 (III) routine servicing and main-
5 tenance of products, to the extent that
6 alternative sources are not readily or
7 reasonably available;

8 (iv) to information and technology es-
9 sential to United States products or pro-
10 duction; or

11 (v) to medical or other humanitarian
12 items.

13 (4) TERMINATION OF SANCTIONS.—The sanc-
14 tions imposed pursuant to this subsection shall apply
15 for a period of at least 12 months following the im-
16 position of sanctions and shall cease to apply there-
17 after only if the President determines and certifies
18 to the Congress that reliable information indicates
19 that the foreign person with respect to which the de-
20 termination was made under paragraph (1)(A) has
21 ceased to aid or abet any foreign government,
22 project, or entity in its efforts to acquire chemical or
23 biological weapons capability as described in that
24 paragraph.

25 (5) WAIVER.—

1 (A) CRITERION FOR WAIVER.—The Presi-
2 dent may waive the application of any sanction
3 imposed on any person pursuant to this sub-
4 section, after the end of the 12-month period
5 beginning on the date on which that sanction
6 was imposed on that person, if the President
7 determines and certifies to the Congress that
8 such waiver is important to the national secu-
9 rity interests of the United States.

10 (B) NOTIFICATION OF AND REPORT TO
11 CONGRESS.—If the President decides to exercise
12 the waiver authority provided in subparagraph
13 (A), the President shall so notify the Congress
14 not less than 20 days before the waiver takes
15 effect. Such notification shall include a report
16 fully articulating the rationale and cir-
17 cumstances which led the President to exercise
18 the waiver authority.

19 (6) DEFINITION OF FOREIGN PERSON.—For
20 purposes of this subsection, the term “foreign per-
21 son” means—

22 (A) an individual who is not a citizen of
23 the United States or an alien admitted for per-
24 manent residence to the United States; or

(B) a corporation, partnership, or other entity which is created or organized under the laws of a foreign country or which has its principal place of business outside the United States.

(e) MISSILE PROLIFERATION CONTROL VIOLATIONS.—

(1) VIOLATIONS BY UNITED STATES PERSONS.—

(A) SANCTIONS.—(i) If the President determines that a United States person knowingly—

(I) exports, transfers, or otherwise engages in the trade of any item on the MTCR Annex, in violation of the provisions of section 38 (22 U.S.C. 2778) or chapter 7 of the Arms Export Control Act, this title, or any regulations or orders issued under any such provisions,

(II) conspires to or attempts to engage in such export, transfer, or trade, or

(III) facilitates such export, transfer, or trade by any other person,

then the President shall impose the applicable sanctions described in clause (ii).

1 (ii) The sanctions which apply to a United
2 States person under clause (i) are the following:

3 (I) If the item on the MTCR Annex
4 involved in the export, transfer, or trade is
5 missile equipment or technology within cat-
6 egory II of the MTCR Annex, then the
7 President shall deny to such United States
8 person, for a period of 2 years, licenses for
9 the transfer of missile equipment or tech-
10 nology controlled under this title.

11 (II) If the item on the MTCR Annex
12 involved in the export, transfer, or trade is
13 missile equipment or technology within cat-
14 egory I of the MTCR Annex, then the
15 President shall deny to such United States
16 person, for a period of not less than 2
17 years, all licenses for items the export of
18 which is controlled under this title.

19 (B) DISCRETIONARY SANCTIONS.—In the
20 case of any determination referred to in sub-
21 paragraph (A), the Secretary may pursue any
22 other appropriate penalties under section 110.

23 (C) WAIVER.—The President may waive
24 the imposition of sanctions under subparagraph
25 (A) on a person with respect to a product or

1 service if the President certifies to the Congress
2 that—

3 (i) the product or service is essential
4 to the national security of the United
5 States; and

6 (ii) such person is sole source supplier
7 of the product or service, the product or
8 service is not available from any alter-
9 native reliable supplier, and the need for
10 the product or service cannot be met in a
11 timely manner by improved manufacturing
12 processes or technological developments.

13 (2) TRANSFERS OF MISSILE EQUIPMENT OR
14 TECHNOLOGY BY FOREIGN PERSONS.—

15 (A) SANCTIONS.—(i) Subject to subpara-
16 graphs (C) through (G), if the President deter-
17 mines that a foreign person, after the date of
18 the enactment of this section, knowingly—

19 (I) exports, transfers, or otherwise en-
20 gages in the trade of any MTCR equip-
21 ment or technology that contributes to the
22 design, development, or production of mis-
23 siles in a country that is not an adherent
24 to the MTCR and would be, if it were
25 United States-origin equipment or tech-

1 nology, subject to the jurisdiction of the
2 United States under this title,

3 (II) conspires to or attempts to en-
4 gage in such export, transfer, or trade, or

5 (III) facilitates such export, transfer,
6 or trade by any other person,

7 or if the President has made a determination
8 with respect to a foreign person, under section
9 73(a) of the Arms Export Control Act, then the
10 President shall impose on that foreign person
11 the applicable sanctions under clause (ii).

12 (ii) The sanctions which apply to a foreign
13 person under clause (i) are the following:

14 (I) If the item involved in the export,
15 transfer, or trade is within category II of
16 the MTCR Annex, then the President shall
17 deny, for a period of 2 years, licenses for
18 the transfer to such foreign person of mis-
19 sile equipment or technology the export of
20 which is controlled under this title.

21 (II) If the item involved in the export,
22 transfer, or trade is within category I of
23 the MTCR Annex, then the President shall
24 deny, for a period of not less than 2 years,
25 licenses for the transfer to such foreign

1 person of items the export of which is con-
2 trolled under this title.

3 (III) If, in addition to actions taken
4 under subclauses (I) and (II), the Presi-
5 dent determines that the export, transfer,
6 or trade has substantially contributed to
7 the design, development, or production of
8 missiles in a country that is not an adher-
9 ent to the MTCR, then the President shall
10 prohibit, for a period of not less than 2
11 years, the importation into the United
12 States of products produced by that for-
13 eign person.

14 (B) INAPPLICABILITY WITH RESPECT TO
15 MTCR ADHERENTS.—Subparagraph (A) does
16 not apply with respect to—

17 (i) any export, transfer, or trading ac-
18 tivity that is authorized by the laws of an
19 adherent to the MTCR, if such authoriza-
20 tion is not obtained by misrepresentation
21 or fraud; or

22 (ii) any export, transfer, or trade of
23 an item to an end user in a country that
24 is an adherent to the MTCR.

1 (C) EFFECT OF ENFORCEMENT ACTIONS
2 BY MTCR ADHERENTS.—Sanctions set forth in
3 subparagraph (A) may not be imposed under
4 this paragraph on a person with respect to acts
5 described in such subparagraph or, if such
6 sanctions are in effect against a person on ac-
7 count of such acts, such sanctions shall be ter-
8 minated, if an adherent to the MTCR is taking
9 judicial or other enforcement against that per-
10 son with respect to such acts, or that person
11 has been found by the government of an adher-
12 ent to the MTCR to be innocent of wrongdoing
13 with respect to such acts.

14 (D) ADVISORY OPINIONS.—The Secretary,
15 in consultation with the Secretary of State and
16 the Secretary of Defense, may, upon the re-
17 quest of any person, issue an advisory opinion
18 to that person as to whether a proposed activity
19 by that person would subject that person to
20 sanctions under this paragraph. Any person
21 who relies in good faith on such an advisory
22 opinion which states that the proposed activity
23 would not subject a person to such sanctions,
24 and any person who thereafter engages in such

1 activity, may not be made subject to such sanc-
2 tions on account of such activity.

3 (E) WAIVER AND REPORT TO CONGRESS.—

4 (i) In any case other than one in which an advi-
5 sory opinion has been issued under subpara-
6 graph (D) stating that a proposed activity
7 would not subject a person to sanctions under
8 this paragraph, the President may waive the
9 application of subparagraph (A) to a foreign
10 person if the President determines that such
11 waiver is essential to the national security of
12 the United States.

13 (ii) In the event that the President decides
14 to apply the waiver described in clause (i), the
15 President shall so notify the Congress not less
16 than 20 working days before issuing the waiver.
17 Such notification shall include a report fully ar-
18 ticulating the rationale and circumstances
19 which led the President to apply the waiver.

20 (F) ADDITIONAL WAIVER.—The President
21 may waive the imposition of sanctions under
22 subparagraph (A) on a person with respect to
23 a product or service if the President certifies to
24 the Congress that—

1 (i) the product or service is essential
2 to the national security of the United
3 States; and

4 (ii) such person is a sole source sup-
5 plier of the product or service, the product
6 or service is not available from any alter-
7 native reliable supplier, and the need for
8 the product or service cannot be met in a
9 timely manner by improved manufacturing
10 processes or technological developments.

11 (G) EXCEPTIONS FROM IMPORT SANC-
12 TIONS.—The President shall not apply the
13 sanction under this subsection prohibiting the
14 importation of the products of a foreign per-
15 son—

16 (i) in the case of procurement of de-
17 fense articles or defense services—

18 (I) under existing contracts or
19 subcontracts, including the exercise of
20 options for production quantities to
21 satisfy requirements essential to the
22 national security of the United States;

23 (II) if the President determines
24 that the person to which the sanctions
25 would be applied is a sole source sup-

plier of the defense articles and services, that the defense articles or services are essential to the national security of the United States, and that alternative sources are not readily or reasonably available; or

(III) if the President determines that such articles or services are essential to the national security of the United States under defense coproduction agreements or NATO Programs of Cooperation;

(ii) to products or services provided under contracts entered into before the date on which the President publishes his intention to impose the sanctions; or

(iii) to—

(I) spare parts,

(II) component parts, but not finished products, essential to United States products or production,

(III) routine services and maintenance of products, to the extent that alternative sources are not readily or reasonably available, or

1 (IV) information and technology
2 essential to United States products or
3 production.

4 (3) DEFINITIONS.—For purposes of this sub-
5 section—

6 (A) the terms “missile equipment or tech-
7 nology” and “MTCR equipment or technology”
8 mean those items listed in category I or cat-
9 egory II of the MTCR Annex;

10 (B) the term “foreign person” means any
11 person other than a United States person;

12 (C)(i) the term “person” means a natural
13 person as well as a corporation, business asso-
14 ciation, partnership, society, trust, any other
15 nongovernmental entity, organization, or group,
16 and any governmental entity operating as a
17 business enterprise, and any successor of any
18 such entity; and

19 (ii) in the case of a country where it may
20 be impossible to identify a specific governmental
21 entity referred to in clause (i), the term “per-
22 son” means—

23 (I) all activities of that government
24 relating to the development or production

1 of any missile equipment or technology;
2 and

3 (II) all activities of that government
4 affecting the development or production of
5 aircraft, electronics, and space systems or
6 equipment; and

7 (D) the term "otherwise engaged in the
8 trade of" means, with respect to a particular
9 export or transfer, to be a freight forwarder or
10 designated exporting agent, or a consignee or
11 end user of the item to be exported or trans-
12 ferred.

13 (f) EFFECT ON OTHER LAWS.—The provisions of
14 this section do not affect any activities subject to the re-
15 porting requirements contained in title V of the National
16 Security Act of 1947.

17 (g) SEEKING MULTILATERAL SUPPORT FOR UNILAT-
18 ERAL SANCTIONS.—The Secretary of State, in consulta-
19 tion with appropriate departments and agencies, shall seek
20 the support of other countries for sanctions imposed under
21 this section.

22 SEC. 112. ADMINISTRATIVE AND JUDICIAL REVIEW.

23 (a) APPLICABILITY.—

24 (1) EXEMPTIONS FROM ADMINISTRATIVE PRO-
25 CEDURE.—Except as provided in this section, the

1 functions exercised under this title are excluded
2 from the operation of sections 551, 553 through
3 559, and 701 through 706 of title 5, United States
4 Code.

5 (2) JUDICIAL REVIEW.—Except as otherwise
6 provided in this section, a final agency action under
7 this title may be reviewed by appeal to the United
8 States Court of Appeals for the District of Columbia
9 Circuit, to the extent provided in this paragraph.
10 The court's review in any such appeal shall be lim-
11 ited to determining whether—

12 (A) a regulation—

13 (i) fails to take an action required by
14 this title;

15 (ii) takes an action prohibited by this
16 title; or

17 (iii) otherwise violates this title;

18 (B) an agency action violates this title;

19 (C) an agency action violates an agency
20 regulation establishing time requirements or
21 other procedural requirements of a non-discre-
22 tionary nature;

23 (D) the issuance of regulations required by
24 this title complies with time restrictions im-
25 posed by this title;

1 (E) license decisions are made and appeals
2 thereof are concluded in compliance with time
3 restrictions imposed by this title;

4 (F) classifications and advisory opinions
5 are issued in compliance with time restrictions
6 imposed by this title;

7 (G) unfair impact determinations under
8 section 114(k) are in compliance with time re-
9 strictions imposed by that section; or

10 (H) the United States has complied with
11 the requirements of section 114(k) after an un-
12 fair impact determination has been made.

13 (b) PROCEDURES RELATING TO CIVIL PENALTIES
14 AND SANCTIONS.—

15 (1) ADMINISTRATIVE PROCEDURES.—Any ad-
16 ministrative sanction imposed under section 110(c)
17 may be imposed only after notice and opportunity
18 for an agency hearing on the record in accordance
19 with sections 554 through 557 of title 5, United
20 States Code. The imposition of any such administra-
21 tive sanction shall be subject to judicial review in ac-
22 cordance with sections 701 through 706 of title 5,
23 United States Code.

24 (2) AVAILABILITY OF CHARGING LETTER.—Any
25 charging letter or other document initiating adminis-

1 trative proceedings for the imposition of sanctions
2 for violations of the regulations issued under section
3 108(a) shall be made available for public inspection
4 and copying.

5 (c) COLLECTION.—If any person fails to pay a civil
6 penalty imposed under section 110(c), the Secretary may
7 ask the Attorney General to bring a civil action in an ap-
8 propriate district court to recover the amount imposed
9 (plus interest at currently prevailing rates from the date
10 of the final order). No such action may be commenced
11 more than 5 years after the order imposing the civil pen-
12 alty becomes final. In such an action, the validity, amount,
13 and appropriateness of such penalty shall not be subject
14 to review.

15 (d) IMPOSITION OF TEMPORARY DENIAL ORDERS.—

16 (1) GROUNDS FOR IMPOSITION.—In any case in
17 which there is reasonable cause to believe that a per-
18 son is engaged in or is about to engage in any act
19 or practice which constitutes or would constitute a
20 violation of this title, or any regulation, order, or li-
21 cense issued under this title, or in any case in which
22 a criminal indictment has been returned against a
23 person alleging a violation of this title or any of the
24 statutes listed in section 110(f), the Secretary may,
25 without a hearing, issue an order temporarily deny-

ing that person's United States export privileges (hereafter in this subsection referred to a "temporary denial order"). A temporary denial order may be effective for no longer than 180 days, but may be renewed by the Secretary, following notice and an opportunity for a hearing, for additional periods of not more than 180 days each.

(2) ADMINISTRATIVE APPEALS.—The person or persons subject to the issuance or renewal of a temporary denial order may appeal the issuance or renewal of the temporary denial order, supported by briefs and other material, to an administrative law judge who shall, within 15 working days after the appeal is filed, issue a decision affirming, modifying, or vacating the temporary denial order. The temporary denial order shall be affirmed if it is shown that—

(A) there is reasonable cause to believe that the person subject to the order is engaged in or is about to engage in any act or practice which constitutes or would constitute a violation of this title, or any regulation, order, or license issued under this title, or

(B) a criminal indictment has been returned against the person subject to the order

1 alleging a violation of this title or any of the
2 statutes listed in section 110(f).

3 The decision of the administrative law judge shall be
4 final unless, within 10 working days after the date
5 of the administrative law judge's decision, an appeal
6 is filed with the Secretary. On appeal, the Secretary
7 shall either affirm, modify, reverse, or vacate the de-
8 cision of the administrative law judge by written
9 order within 10 working days after receiving the ap-
10 peal. The written order of the Secretary shall be
11 final and is not subject to judicial review, except as
12 provided in paragraph (3). The materials submitted
13 to the administrative law judge and the Secretary
14 shall constitute the administrative record for pur-
15 poses of review by the court.

16 (3) COURT APPEALS.—An order of the Sec-
17 retary affirming, in whole or in part, the issuance or
18 renewal of a temporary denial order may, within 15
19 days after the order is issued, be appealed by a per-
20 son subject to the order to the United States Court
21 of Appeals for the District of Columbia Circuit,
22 which shall have jurisdiction of the appeal. The
23 court may review only those issues necessary to de-
24 termine whether the issuance of the temporary de-
25 nial order was based on reasonable cause to believe

1 that the person subject to the order was engaged in
2 or was about to engage in any act or practice which
3 constitutes or would constitute a violation of this
4 title, or any regulation, order, or license issued
5 under this title, or if a criminal indictment has been
6 returned against the person subject to the order al-
7 leging a violation of this title or any of the statutes
8 listed in section 110(f). The court shall vacate the
9 Secretary's order if the court finds that the Sec-
10 retary's order is arbitrary, capricious, an abuse of
11 discretion, or otherwise not in accordance with law.

12 **SEC. 113. ENFORCEMENT.**

13 (a) **GENERAL AUTHORITY AND DESIGNATION.**—

14 (1) **POLICY GUIDANCE ON ENFORCEMENT.**—
15 The Secretary, in consultation with the Secretary of
16 the Treasury and the heads of other appropriate de-
17 partments and agencies, shall be responsible for pro-
18 viding policy guidance on the enforcement of this
19 title.

20 (2) **GENERAL AUTHORITIES.**—(A) To the extent
21 necessary or appropriate to the enforcement of this
22 title or to the imposition of any penalty, forfeiture,
23 or liability arising under the Export Administration
24 Act of 1979, officers or employees of the Depart-
25 ment of Commerce designated by the Secretary and

1 officers and employees of the United States Customs
2 Service designated by the Commissioner may exer-
3 cise the enforcement authorities described in para-
4 graph (3).

5 (B) In carrying out the enforcement authorities
6 described in paragraph (3), the Commissioner of
7 Customs, and employees of the United States Cus-
8 toms Service designated by the Commissioner, may
9 make investigations within or outside the United
10 States and at those ports of entry or exit from the
11 United States where officers of the United States
12 Customs Service are authorized by law to carry out
13 such enforcement responsibilities. Subject to para-
14 graph (3), the United States Customs Service is au-
15 thorized, in the enforcement of this title, to search,
16 detain (after search), and seize commodities or tech-
17 nology at those ports of entry or exit from the Unit-
18 ed States where officers of the Customs Service are
19 authorized by law to conduct such searches, deten-
20 tions, and seizures, and at those places outside the
21 United States where the Customs Service, pursuant
22 to agreements or other arrangements with other
23 countries, is authorized to perform enforcement ac-
24 tivities.

1 (C) In carrying out the enforcement authorities
2 described in paragraph (3), the Secretary, and offi-
3 cers and employees of the Department of Commerce
4 designated by the Secretary, may make investiga-
5 tions within the United States, and shall conduct,
6 outside the United States, prelicense and
7 postshipment verifications of items licensed for ex-
8 port and investigations in the enforcement of section
9 108. The Secretary, and officers and employees of
10 the Department of Commerce designated by the Sec-
11 retary, are authorized to search, detain (after
12 search), and seize items at those places within the
13 United States other than those ports specified in
14 subparagraph (B). The search, detention (after
15 search), or seizure of items at those ports and places
16 specified in subparagraph (B) may be conducted by
17 officers and employees of the Department of Com-
18 merce only with the concurrence of the Commis-
19 sioner of Customs or a person designated by the
20 Commissioner.

21 (D) The Secretary and the Commissioner of
22 Customs may enter into agreements and arrange-
23 ments for the enforcement of this title, including for-
24 eign investigations and information exchange.

1 (3) SPECIFIC AUTHORITIES.—(A) Any officer or
2 employee designated under paragraph (2) may do
3 the following in carrying out the enforcement au-
4 thority under this title:

5 (i) Make investigations of, obtain informa-
6 tion from, make inspection of any books,
7 records, or reports (including any writings re-
8 quired to be kept by the Secretary), premises,
9 or property of, and take the sworn testimony of,
10 any person.

11 (ii) Administer oaths or affirmations, and
12 by subpoena require any person to appear and
13 testify or to appear and produce books, records,
14 and other writings, or both. In the case of con-
15 tumacy by, or refusal to obey a subpoena issued
16 to, any such person, a district court of the
17 United States, on request of the Attorney Gen-
18 eral and after notice to any such person and a
19 hearing, shall have jurisdiction to issue an order
20 requiring such person to appear and give testi-
21 mony or to appear and produce books, records,
22 and other writings, or both. Any failure to obey
23 such order of the court may be punished by
24 such court as a contempt thereof. The attend-
25 ance of witnesses and the production of docu-

1 ments provided for in this clause may be re-
2 quired from any State, the District of Colum-
3 bia, or in any territory of the United States at
4 any designated place. Witnesses subpoenaed
5 under this subsection shall be paid the same
6 fees and mileage as are paid witnesses in the
7 district courts of the United States.

8 (B)(i) Any officer or employee of the Office of
9 Export Enforcement of the Department of Com-
10 merce who is designated by the Secretary under
11 paragraph (2), and any officer or employee of the
12 United States Customs Service who is designated by
13 the Commissioner of Customs under paragraph (2),
14 may do the following in carrying out the enforce-
15 ment authority under this title:

16 (I) Execute any warrant or other process
17 issued by a court or officer of competent juris-
18 diction with respect to the enforcement of this
19 title.

20 (II) Make arrests without warrant for any
21 violation of this title committed in his or her
22 presence or view, or if the officer or employee
23 has probable cause to believe that the person to
24 be arrested has committed, is committing, or is
25 about to commit such a violation.

1 (III) Carry firearms.

2 (ii) Officers and employees of the Office of Ex-
3 port Enforcement designated by the Secretary under
4 paragraph (2) shall exercise the authorities set forth
5 in clause (i) pursuant to guidelines approved by the
6 Attorney General.

7 (C) Any officer or employee of the United
8 States Customs Service designated by the Commis-
9 sioner of Customs under paragraph (2) may do the
10 following in carrying out the enforcement authority
11 under this title:

12 (i) Stop, search, and examine a vehicle,
13 vessel, aircraft, or person on which or whom the
14 officer or employee has reasonable cause to sus-
15 pect there is any item that has been, is being,
16 or is about to be exported from or transited
17 through the United States in violation of this
18 title.

19 (ii) Detain and search any package or con-
20 tainer in which the officer or employee has rea-
21 sonable cause to suspect there is any item that
22 has been, is being, or is about to be exported
23 from or transited through the United States in
24 violation of this title.

1 (iii) Detain (after search) or seize any
2 item, for purposes of securing for trial or for-
3 feiture to the United States, on or about such
4 vehicle, vessel, aircraft, or person or in such
5 package or container, if the officer or employee
6 has probable cause to believe the item has been,
7 is being, or is about to be exported from or
8 transited through the United States in violation
9 of this title.

10 (4) OTHER AUTHORITIES NOT AFFECTED.—The
11 authorities conferred by this section are in addition
12 to any authorities conferred under other laws.

13 (b) FORFEITURE.—Any commodities or tangible
14 items lawfully seized under subsection (a) by designated
15 officers or employees shall be subject to forfeiture to the
16 United States. Those provisions of law relating to—

17 (1) the seizure, summary and judicial forfeiture,
18 and condemnation of property for violations of the
19 customs laws,

20 (2) the disposition of such property or the pro-
21 ceeds from the sale thereof,

22 (3) the remission or mitigation of such forfeit-
23 ures, and

24 (4) the compromise of claims,

1 shall apply to seizures and forfeitures incurred, or alleged
2 to have been incurred, under the provisions of this sub-
3 section, insofar as applicable and not inconsistent with
4 this title; except that such duties as are imposed upon the
5 customs officer or any other person with respect to the
6 seizure and forfeiture of property under the customs laws
7 may be performed with respect to seizures and forfeitures
8 of property under this subsection by the Secretary or such
9 officers and employees of the Department of Commerce
10 as may be authorized or designated for that purpose by
11 the Secretary, or, upon the request of the Secretary, by
12 any other agency that has authority to manage and dis-
13 pose of seized property.

14 (c) REFERRAL OF CASES.—All cases involving viola-
15 tions of this title shall be referred to the Secretary for
16 purposes of determining civil penalties and administrative
17 sanctions under section 110(c), or to the Attorney General
18 for criminal action in accordance with this title or to both
19 the Secretary and the Attorney General.

20 (d) UNDERCOVER INVESTIGATION OPERATIONS.—

21 (1) USE OF FUNDS.—With respect to any un-
22 dercover investigative operation conducted by the Of-
23 fice of Export Enforcement of the Department of
24 Commerce (hereafter in this subsection referred to

1 as "OEE") necessary for the detection and prosecu-
2 tion of violations of this title—

3 (A) funds made available for export en-
4 forcement under this title may be used to pur-
5 chase property, buildings, and other facilities,
6 and to lease space within the United States,
7 without regard to sections 1341 and 3324 of
8 title 31, United States Code, the third undesig-
9 nated paragraph under the heading of "MIS-
10 CELLANEOUS" of the Act of March 3, 1877, (40
11 U.S.C. 34), sections 3732(a) and 3741 of the
12 Revised Statutes of the United States (41
13 U.S.C. 11(a) and 22), and subsections (a) and
14 (c) of section 304, and section 305 of the Fed-
15 eral Property and Administrative Services Act
16 of 1949 (41 U.S.C. 254(a) and (c) and 255),

17 (B) funds made available for export en-
18 forcement under this title may be used to estab-
19 lish or to acquire proprietary corporations or
20 business entities as part of an undercover oper-
21 ation, and to operate such corporations or busi-
22 ness entities on a commercial basis, without re-
23 gard to section 9102 of title 31, United States
24 Code,

1 (C) funds made available for export en-
2 forcement under this title and the proceeds
3 from undercover operations may be deposited in
4 banks or other financial institutions without re-
5 gard to the provisions of section 648 of title 18,
6 United States Code, and section 3302 of title
7 31, United States Code, and

8 (D) the proceeds from undercover oper-
9 ations may be used to offset necessary and rea-
10 sonable expenses incurred in such operations
11 without regard to the provisions of section 3302
12 of title 31, United States Code,

13 if the Director of OEE (or an officer or employee
14 designated by the Director) certifies, in writing, that
15 the action authorized by subparagraph (A), (B), (C),
16 or (D) for which the funds would be used is nec-
17 essary for the conduct of the undercover operation.

18 (2) DISPOSITION OF BUSINESS ENTITIES.—If a
19 corporation or business entity established or ac-
20 quired as part of an undercover operation with a net
21 value of more than \$50,000 is to be liquidated, sold,
22 or otherwise disposed of, the Director of OEE shall
23 report the circumstances to the Secretary and the
24 Comptroller General, as much in advance of such
25 disposition as the Director of OEE or his or her des-

1 ignee determines is practicable. The proceeds of the
2 liquidation, sale, or other disposition, after obliga-
3 tions incurred by the corporation or business enter-
4 prise are met, shall be deposited in the Treasury of
5 the United States as miscellaneous receipts.

6 (3) DEPOSIT OF PROCEEDS.—As soon as the
7 proceeds from an OEE undercover investigative op-
8 eration with respect to which an action is authorized
9 and carried out under this subsection are no longer
10 necessary for the conduct of such operation, such
11 proceeds or the balance of such proceeds remaining
12 at the time shall be deposited into the Treasury of
13 the United States as miscellaneous receipts.

14 (4) AUDIT AND REPORT.—(A) The Director of
15 OEE shall conduct a detailed financial audit of each
16 OEE undercover investigative operation which is
17 closed and shall submit the results of the audit in
18 writing to the Secretary. Not later than 180 days
19 after an undercover operation is closed, the Sec-
20 retary shall submit to the Congress a report on the
21 results of the audit.

22 (B) The Secretary shall submit annually to the
23 Congress a report, which may be included in the an-
24 nual report under section 115, specifying the follow-
25 ing information:

1 (i) The number of undercover investigative
2 operations pending as of the end of the period
3 for which such report is submitted.

4 (ii) The number of undercover investigative
5 operations commenced in the 1-year period pre-
6 ceding the period for which such report is sub-
7 mitted.

8 (iii) The number of undercover investiga-
9 tive operations closed in the 1-year period pre-
10 ceding the period for which such report is sub-
11 mitted and, with respect to each such closed un-
12 dercover operation, the results obtained and any
13 civil claims made with respect thereto.

14 (5) DEFINITIONS.—For purposes of paragraph
15 (4)—

16 (A) the term “closed”, with respect to an
17 undercover investigative operation, refers to the
18 earliest point in time at which all criminal pro-
19 ceedings (other than appeals) pursuant to the
20 investigative operation are concluded, or covert
21 activities pursuant to such operation are con-
22 cluded, whichever occurs later;

23 (B) the terms “undercover investigative
24 operation” and “undercover operation” mean

any undercover investigative operation conducted by OEE—

(i) in which the gross receipts (excluding interest earned) exceed \$25,000, or expenditures (other than expenditures for salaries of employees) exceed \$75,000, and

(ii) which is exempt from section 3302 or 9102 of title 31, United States Code,

except that clauses (i) and (ii) shall not apply with respect to the report to the Congress required by subparagraph (B) of paragraph (4); and

(C) the term “employees” means employees, as defined in section 2105 of title 5, United States Code, of the Department of Commerce.

(e) **REFERENCE TO ENFORCEMENT.**—For purposes of this section, a reference to the enforcement of this title or to a violation of this title includes a reference to the enforcement or a violation of any regulation, license, or order issued under this title.

SEC. 114. EXPORT CONTROL AUTHORITIES AND PROCEDURES.

(a) **POLICY GUIDANCE.**—

(1) **IN GENERAL.**—As directed by the President, annual policy guidance shall be issued to pro-

1 vide detailed implementing guidance to export licens-
2 ing officials in all appropriate departments and
3 agencies.

4 (2) ELEMENTS OF ANNUAL POLICY REVIEW.—

5 In order to develop such annual policy guidance, ex-
6 port controls and other regulations to implement
7 this title shall be reviewed annually. This annual pol-
8 icy review shall include an evaluation of the benefits
9 and costs of the imposition, extension, or removal of
10 controls under this title. This review shall include—

11 (A) an assessment by the Secretary of the
12 economic consequences of the imposition, exten-
13 sion, or removal of controls during the preced-
14 ing 12 months, including the impact on United
15 States exports or jobs;

16 (B) an assessment by the Secretary of
17 State of the objectives of the controls in effect
18 during the preceding 12 months, and the extent
19 to which the controls have served those objec-
20 tives; and

21 (C) an assessment by the Secretary of De-
22 fense of the impact that the imposition, exten-
23 sion, or removal of controls during the preced-
24 ing 12 months has had on United States na-
25 tional security.

1 (b) EXPORT CONTROL AUTHORITY AND FUNC-
2 TIONS.—

3 (1) IN GENERAL.—Unless otherwise reserved to
4 the President or a department or agency outside the
5 Department of Commerce, all power, authority, and
6 discretion conferred by this title shall be exercised by
7 the Secretary.

8 (2) DELEGATION OF FUNCTIONS OF THE SEC-
9 RETARY.—The Secretary may delegate any function
10 under this title to the Under Secretary of Commerce
11 for Export Administration appointed under sub-
12 section (d) or to any other officer of the Department
13 of Commerce.

14 (c) EXPORT CONTROL POLICY COMMITTEE.—

15 (1) ESTABLISHMENT.—There is established an
16 Export Control Policy Committee (hereafter in this
17 subsection referred to as the “Committee”).

18 (2) FUNCTIONS.—The Committee shall—

19 (A) provide policy guidance and advice to
20 the President on export control issues under
21 this title;

22 (B) review policy recommendations pro-
23 posed by the Secretary and other members of
24 the Committee; and

1 (C) receive policy recommendations from
2 other departments and agencies and resolve pol-
3 icy disputes among departments and agencies
4 under this title.

5 (3) MEMBERSHIP.—The Committee shall in-
6 clude the Secretary, the Secretary of Defense, the
7 Secretary of Energy, the heads of other relevant de-
8 partments, and appropriate officials of the Executive
9 Office of the President.

10 (4) CHAIR.—The Committee shall be chaired by
11 the President or his designee.

12 (5) DELEGATION; OTHER REPRESENTATIVES.—
13 A member of the Committee under paragraph (3)
14 may designate the deputy head of his or her depart-
15 ment or agency to serve in his or her absence as a
16 member of the Committee, but this authority may
17 not be delegated to any other individual. The chair
18 may also invite the temporary participation in the
19 Committee's meetings of representatives from other
20 offices and agencies as appropriate to the issues
21 under consideration.

22 (6) MEETINGS.—The chair of the Committee
23 may call a meeting of the Committee. Meetings shall
24 not be subject to section 552b of title 5, United
25 States Code.

(d) UNDER SECRETARY OF COMMERCE; ASSISTANT SECRETARIES.—

(1) APPOINTMENT.—The President shall appoint, by and with the advice and consent of the Senate, an Under Secretary of Commerce for Export Administration who shall carry out all functions of the Secretary under this title and other provisions of law relating to national security, as the Secretary may delegate. The President shall appoint, by and with the advice and consent of the Senate, two Assistant Secretaries of Commerce to assist the Under Secretary in carrying out such functions.

(2) TRANSITION PROVISIONS.—Those individuals serving in the positions of Under Secretary of Commerce for Export Administration and Assistant Secretaries of Commerce under section 15(a) of the Export Administration Act of 1979, on the day before the date of the enactment of this Act, shall be deemed to have been appointed under paragraph (1), by and with the advice and consent of the Senate, as of such date of enactment.

(e) ISSUANCE OF REGULATIONS.—The President and the Secretary may issue such regulations as are necessary to carry out this title. Any such regulations the purpose of which is to carry out section 105, 106, 111(a), or

1 111(c) may be issued only after the regulations are sub-
 2 mitted for review to such departments or agencies as the
 3 President considers appropriate. The Secretary shall con-
 4 sult with the appropriate export advisory committee ap-
 5 pointed under section 104(f) in formulating regulations
 6 under this title. The second sentence of this subsection
 7 does not require the concurrence or approval of any offi-
 8 cial, department, or agency to which such regulations are
 9 submitted.

10 (f) AMENDMENTS TO REGULATIONS.—If the Sec-
 11 retary proposes to amend regulations issued under this
 12 title, the Secretary shall report to the Committee on Bank-
 13 ing, Housing, and Urban Affairs of the Senate and the
 14 Speaker of the House of Representatives on the intent and
 15 rationale of such amendments. Such report shall evaluate
 16 the cost and burden to the United States exporters of the
 17 proposed amendments in relation to any enhancement of
 18 licensing objectives. The Secretary shall consult with the
 19 appropriate export advisory committees appointed under
 20 section 104(f) in amending regulations issued under this
 21 title.

22 (g) CONFIDENTIALITY OF INFORMATION.—

23 (1) EXEMPTIONS FROM DISCLOSURE.—

24 (A) INFORMATION OBTAINED ON OR BE-
 25 FORE JUNE 30, 1980.—Except as otherwise pro-

1 vided by the third sentence of section
2 108(b)(2), information obtained under the Ex-
3 port Administration Act of 1979 and its prede-
4 cessor statutes on or before June 30, 1980,
5 which is deemed confidential, including Ship-
6 per's Export Declarations, or with reference to
7 which a request for confidential treatment is
8 made by the person furnishing such informa-
9 tion, shall not be subject to disclosure under
10 section 552 of title 5, United States Code, and
11 such information shall not be published or dis-
12 closed unless the Secretary determines that the
13 withholding thereof is contrary to the national
14 interest.

15 (B) INFORMATION OBTAINED AFTER JUNE
16 30, 1980.—Except as otherwise provided by the
17 third sentence of section 108(b)(2), information
18 obtained under this title or under the Export
19 Administration Act of 1979 after June 30,
20 1980, may be withheld from disclosure only to
21 the extent permitted by statute, except that in-
22 formation submitted, obtained, or considered in
23 connection with an application for an export li-
24 cense or other export authorization under the
25 Export Administration Act of 1979 or this title,

1 including the export license or other export au-
2 thorization itself, classification requests de-
3 scribed in section 109(i)(1), information ob-
4 tained during the course of an assessment
5 under subsection (k), information or evidence
6 obtained in the course of any investigation, and
7 information obtained or furnished under this
8 title in connection with international agree-
9 ments, treaties, or obligations shall be withheld
10 from public disclosure and shall not be subject
11 to disclosure under section 552 of title 5, Unit-
12 ed States Code, unless the release of such infor-
13 mation is determined by the Secretary to be in
14 the national interest.

15 (2) INFORMATION TO CONGRESS AND GAO.—

16 (A) IN GENERAL.—Nothing in this title
17 shall be construed as authorizing the withhold-
18 ing of information from the Congress or from
19 the General Accounting Office.

20 (B) AVAILABILITY TO THE CONGRESS.—

21 (i) IN GENERAL.—All information ob-
22 tained at any time under this title or pre-
23 vious Acts regarding the control of exports,
24 including any report or license application
25 required under this title, shall be made

1 available to any committee or subcommit-
2 tee of Congress of appropriate jurisdiction
3 upon the request of the chairman or rank-
4 ing minority member of such committee or
5 subcommittee.

6 (ii) PROHIBITION ON FURTHER DIS-
7 CLOSURE.—No committee, subcommittee,
8 or Member of Congress shall disclose any
9 information obtained under this title or
10 previous Acts regarding the control of ex-
11 ports which is submitted on a confidential
12 basis to the Congress under clause (i) un-
13 less the full committee to which the infor-
14 mation is made available determines that
15 the withholding of the information is con-
16 trary to the national interest.

17 (C) AVAILABILITY TO THE GAO.—

18 (i) IN GENERAL.—Notwithstanding
19 paragraph (1), information referred to in
20 subparagraph (B) shall, consistent with
21 the protection of intelligence, counterintel-
22 ligence, and law enforcement sources,
23 methods, and activities, as determined by
24 the agency that originally obtained the in-
25 formation, and consistent with the provi-

1 sions of section 716 of title 31, United
2 States Code, be made available only by the
3 agency, upon request, to the Comptroller
4 General of the United States or to any of-
5 ficer or employee of the General Account-
6 ing Office authorized by the Comptroller
7 General to have access to such informa-
8 tion.

9 (ii) PROHIBITION ON FURTHER DIS-
10 CLOSURES.—No officer or employee of the
11 General Accounting Office shall disclose,
12 except to the Congress in accordance with
13 this paragraph, any such information
14 which is submitted on a confidential basis
15 and from which any individual can be iden-
16 tified.

17 (3) INFORMATION EXCHANGE.—Notwithstand-
18 ing paragraph (1), the Secretary and the Commis-
19 sioner of Customs shall exchange licensing and en-
20 forcement information with each other which is nec-
21 essary to facilitate enforcement efforts and effective
22 license decisions.

23 (4) PENALTIES FOR DISCLOSURE OF CON-
24 FIDENTIAL INFORMATION.—Any officer or employee
25 of the United States, or any department or agency

1 thereof, who publishes, divulges, discloses, or makes
2 known in any manner or to any extent not author-
3 ized by law any confidential information that—

4 (A) he or she obtains in the course of his
5 or her employment or official duties or by rea-
6 son of any examination or investigation made
7 by, or report or record made to or filed with,
8 such department or agency, or officer or em-
9 ployee thereof, and

10 (B) is exempt from disclosure under this
11 subsection,

12 shall be fined not more than \$10,000, or imprisoned
13 not more than one year, or both, shall be removed
14 from office or employment, and shall be subject to
15 a civil penalty of not more than \$1,000 imposed by
16 the Secretary under section 110(c).

17 (h) **AUTHORITY FOR SEMINAR AND PUBLICATIONS**

18 **FUND.**—The Secretary is authorized to cooperate with
19 public agencies, other governments, international organi-
20 zations, private individuals, private associations, and other
21 groups in connection with seminars, publications, and re-
22 lated activities to carry out export activities, including
23 educating the public or government officials on the appli-
24 cation of this title and the regulations issued under this
25 title. The Secretary is further authorized to accept con-

1 tributions of funds, property, or services in connection
2 with such activities to recover the cost of such programs
3 and activities. Contributions may include payments for
4 materials or services provided as part of such activities.
5 The contributions collected may be retained for use in cov-
6 ering the costs of such activities, and for providing infor-
7 mation to the public with respect to this title and other
8 export control programs of the United States and other
9 governments.

10 (i) SUPPORT OF OTHER COUNTRIES' EXPORT CON-
11 TROL PROGRAM.—The Secretary is authorized to partici-
12 pate in and provide training to officials of other countries
13 on the principles and procedures for the implementation
14 of effective export controls and may participate in any
15 such training provided by other departments and agencies
16 of the United States.

17 (j) INCORPORATED COMMODITIES AND TECH-
18 NOLOGY.—

19 (1) COMMODITIES CONTAINING CONTROLLED
20 PARTS AND COMPONENTS.—Controls may not be im-
21 posed under this title or any other provision of law
22 for a commodity solely because the commodity con-
23 tains parts or components subject to export controls
24 under this title if such parts or components—

1 (A) are essential to the functioning of the
2 commodity,

3 (B) are customarily included in sales of the
4 commodity in countries other than controlled
5 countries, and

6 (C) comprise 25 percent or less of the total
7 value of the commodity,

8 unless the commodity itself, if exported, would by
9 virtue of the functional characteristics of the com-
10 modity as a whole make a significant contribution to
11 the military or proliferation potential of a controlled
12 country or end user which would prove detrimental
13 to the national security of the United States.

14 (2) REEXPORTS OF FOREIGN-MADE ITEMS IN-
15 CORPORATING U.S. ITEMS.—

16 (A) COMMODITIES.—(i) Subject to clause
17 (ii), no authority or permission may be required
18 under section 105 or section 106 to reexport a
19 commodity that is produced in a country other
20 than the United States and incorporates com-
21 modities that are subject to the jurisdiction of
22 the United States, if the value of the controlled
23 United States content of the commodity pro-
24 duced in such other country is 25 percent or
25 less of the total value of the commodity.

1 (ii) No authority or permission may be re-
2 quired under section 105 or section 106 to reex-
3 port to a terrorist country, or to a country
4 against which an embargo is in effect under the
5 Trading with the Enemy Act, the International
6 Emergency Economic Powers Act, or other pro-
7 vision of law, a commodity that is produced in
8 a country other than the United States and in-
9 corporates commodities that are subject to the
10 jurisdiction of the United States, if the value of
11 the controlled United States content of the
12 commodity produced in such other country is
13 10 percent or less of the total value of the com-
14 modity.

15 (iii) For purposes of clause (ii), a “terror-
16 ist country” is a country with respect to which
17 a determination is in effect that was made
18 under section 106(i)(1)(A) of this Act, or sec-
19 tion 6(j)(1)(A) of the Export Administration
20 Act of 1979, that the government of such coun-
21 try has repeatedly provided support for acts of
22 international terrorism.

23 (B) TECHNOLOGY.—(i) No authority or
24 permission may be required under section 105
25 or section 106 to reexport technology that is

1 produced in a country other than the United
2 States and is commingled with or drawn from
3 technology that is produced in the United
4 States, if the value of the controlled United
5 States content of the technology produced in
6 such other country is 25 percent or less of the
7 total value of the technology.

8 (ii) No authority or permission may be re-
9 quired under section 105 or section 106 to reex-
10 port to a terrorist country, or to a country
11 against which an embargo is in effect under the
12 Trading With the Enemy Act, the International
13 Emergency Economic Powers Act, or other pro-
14 vision of law, technology that is produced in a
15 country other than the United States and is
16 commingled with or drawn from technology that
17 is produced in the United States, if the value
18 of the controlled United States content of the
19 technology produced in such other country is 10
20 percent or less of the total value of the tech-
21 nology.

22 (C) CONTROLLED CONTENT.—For pur-
23 poses of this paragraph, the “controlled United
24 States content” of a commodity or technology
25 means those commodities or technology that—

1 (i) are subject to the jurisdiction of
2 the United States;

3 (ii) are incorporated into the commod-
4 ity or technology; and

5 (iii) would, at the time of the reex-
6 port, require a license under section 105 or
7 106 if exported from the United States to
8 a country to which the commodity or tech-
9 nology is to be reexported.

10 (3) TREATMENT OF TECHNOLOGY AND SOURCE
11 CODE.—For purposes of this subsection, technology
12 and source code used to design or produce foreign-
13 made commodities are not deemed to be incor-
14 porated into such foreign-made commodities.

15 (4) REPORTING REQUIREMENTS.—Notwith-
16 standing paragraphs (1) through (3), the Secretary
17 may require persons to report to the Department of
18 Commerce their proposed calculations and underly-
19 ing data sufficient for the Department of Commerce
20 to evaluate the adequacy of those calculations and
21 data related to commodities and technology before a
22 reexporter may rely upon the exclusions from con-
23 trols provided in this subsection.

24 (k) UNFAIR IMPACT ON UNITED STATES EX-
25 PORTER.—

1 (1) POLICY.—It is the policy of the United
2 States that no United States exporter should be af-
3 fected unfairly by export control policies or practices
4 unless relief from such controls would create a sig-
5 nificant risk to the foreign policy, nonproliferation,
6 or national security interests of the United States.

7 (2) RELIEF FROM EXPORT CONTROLS.—(A) A
8 person may petition the Secretary for relief from
9 current export control requirements (other than con-
10 trol requirements specifically imposed by this title or
11 other provisions of law) on the basis of foreign avail-
12 ability. A person may also petition the Secretary for
13 approval of an export license application on other
14 grounds which the Secretary, with the concurrence
15 of the Secretary of Defense, shall establish by regu-
16 lation. The Secretary shall, upon receipt of such pe-
17 titions, and may, on his or her initiative, conduct as-
18 sessments for providing relief based upon these
19 grounds.

20 (B) For purposes of this subsection, foreign
21 availability exists when the controlled item is avail-
22 able in fact, or is expected with a high degree of cer-
23 tainty to be available in fact in the near term, in
24 sufficient quantity and comparable quality to con-
25 trolled countries or end users from sources outside

1 the United States so that the requirement for a li-
2 cense is or would be ineffective in achieving the pur-
3 pose of the control.

4 (3) PROVISIONS FOR RELIEF.—The Secretary,
5 in consultation with appropriate departments and
6 agencies, shall make determinations of facts under
7 paragraph (2), addressing, in the case of a petition
8 filed under paragraph (2), each ground for relief as-
9 serted in the petition, and, subject to paragraph (4),
10 shall provide at least one of the following forms of
11 relief to persons that meet the criteria in paragraph
12 (2):

13 (A) Change the control status of, or licens-
14 ing requirements on, all or some of the items in
15 question so as to eliminate the unfair impact.

16 (B) Selectively approve the sale of con-
17 trolled items so as to eliminate the unfair im-
18 pact.

19 (C) Seek multilateral support to eliminate
20 the source of unfair impact. If relief under this
21 subparagraph is chosen and if such efforts fail
22 to achieve multilateral support, then the Sec-
23 retary, not later than 330 days from the date
24 of the Secretary's initiation of the assessment
25 under paragraph (2), shall provide other relief

1 pursuant to subparagraph (A) or (B) or con-
2 clude pursuant to paragraph (4) that the grant-
3 ing of such relief would create a significant risk
4 to United States nonproliferation, foreign pol-
5 icy, or national security interests.

6 A determination that a petitioner qualifies for relief
7 under paragraph (2) shall not compel the United
8 States to remove controls from an item that remains
9 subject to control by a multilateral regime.

10 (4) EXCEPTIONS FROM RELIEF.—The Secretary
11 shall provide relief under paragraph (3) to a peti-
12 tioner who qualifies for relief under paragraph (2)
13 unless the Secretary concludes that the granting of
14 such relief would create a significant risk to United
15 States nonproliferation, foreign policy, or national
16 security interests. In the event the Secretary deter-
17 mines to grant such relief, he or she may do so un-
18 less the President determines that such relief would
19 create a significant risk to the foreign policy, non-
20 proliferation, or national security interests of the
21 United States.

22 (5) PROCEDURES.—

23 (A) PUBLICATION.—In any case in which
24 the President or the Secretary determines that
25 relief under paragraph (3) will not be granted,

1 notwithstanding the existence of facts that con-
2 stitute a basis for granting relief, the Secretary
3 shall publish that determination, together with
4 a concise statement of its basis and the esti-
5 mated economic impact of the decision.

6 (B) NOTICE OF ASSESSMENTS.—Whenever
7 the Secretary undertakes an assessment under
8 paragraph (2), the Secretary shall publish in
9 the Federal Register notice of the initiation of
10 such assessment.

11 (C) PROCEDURES FOR MAKING DETER-
12 MINATIONS.—During the conduct of an assess-
13 ment under this subsection, the Secretary shall
14 consult with other appropriate departments and
15 agencies concerning the assessment. The Sec-
16 retary shall make a determination as to whether
17 relief is required under paragraph (2) within
18 120 days after the date of the Secretary's re-
19 ceipt of the petition requesting relief or the date
20 of the Secretary's initiation of the assessment
21 (as the case may be) and shall so notify the ap-
22 plicant. If the Secretary has determined that
23 relief is appropriate, the Secretary shall, upon
24 making such a determination, submit the deter-
25 mination for review to the Department of De-

1 fense and other appropriate departments and
2 agencies for consultations regarding the find-
3 ings and the relief selected. If the Secretary of
4 Defense or other department or agency head
5 disagrees with the Secretary's determination, he
6 or she may appeal the determination to the
7 President in writing, but only on the basis of
8 the criteria set forth in paragraph (4). The
9 President shall resolve any such disagreement
10 so that, in all cases, not later than 150 days
11 after the date of the Secretary's receipt of the
12 petition requesting relief or the date of the Sec-
13 retary's initiation of the assessment (as the
14 case may be), the Secretary responds in writing
15 to the petitioner and submits for publication in
16 the Federal Register, that—

17 (i) unfair impact exists and—

18 (I) the requirement of a license
19 has been removed;

20 (II) the control status of all or
21 some of the items in question has
22 been changed so as to eliminate the
23 unfair impact;

1 (III) the sale of controlled items
2 has been approved so as to eliminate
3 the unfair impact;

4 (IV) export controls under this
5 title are to be maintained notwith-
6 standing the finding under paragraph
7 (2); or

8 (V) the United States rec-
9 ommendation to remove the license re-
10 quirement or change the control sta-
11 tus will be submitted to a relevant
12 multilateral regime for consideration
13 for a period of not more than 180
14 days beginning on the date of the
15 publication; or

16 (ii) a right to relief under paragraph
17 (2) does not exist.

18 The reasons for maintaining export controls
19 under clause (i)(IV) shall be included in the
20 submission to the petitioner and the publica-
21 tion. In any case in which the submission for
22 publication is not made within the 150-day pe-
23 riod required by this subparagraph, the Sec-
24 retary may not thereafter require a license for

1 the export of items that are the subject of the
2 allegation under paragraph (2).

3 (D) NEGOTIATIONS TO ELIMINATE FOR-
4 EIGN AVAILABILITY OR COMPETITIVE DIS-
5 ADVANTAGE.—(i) In any case in which export
6 controls are maintained under this section pur-
7 suant to paragraph (4) despite foreign availabil-
8 ity or significant competitive disadvantage, the
9 Secretary of State shall actively pursue negotia-
10 tions with the governments of the appropriate
11 foreign countries for the purpose of eliminating
12 such foreign availability or competitive dis-
13 advantage. No later than the commencement of
14 such negotiations, the Secretary of State shall
15 notify the Congress in writing that the Sec-
16 retary of State has begun such negotiations and
17 why it is important that export controls on the
18 items involved be maintained to avoid a signifi-
19 cant risk to the foreign policy, nonproliferation,
20 or national security interests of the United
21 States.

22 (ii) Whenever the Secretary of State has
23 reason to believe that items subject to export
24 controls by the United States may become
25 available in fact from other countries to con-

1 trolled countries and that such availability can
2 be prevented or eliminated by means of negotia-
3 tions with such other countries, the Secretary of
4 State shall promptly initiate negotiations with
5 the governments of such other countries to pre-
6 vent such foreign availability.

7 (6) SHARING OF INFORMATION.—Each depart-
8 ment or agency of the United States, including any
9 intelligence agency, and all contractors with any
10 such department or agency, shall, upon the request
11 of the Secretary and consistent with the protection
12 of intelligence sources and methods, furnish informa-
13 tion to the Department of Commerce concerning for-
14 eign availability of items subject to export controls
15 under this title. Consistent with the protection of in-
16 telligence sources and methods and classification re-
17 strictions, each such department or agency shall
18 allow the Department of Commerce access to such
19 information from a laboratory or other facility with-
20 in such department or agency.

21 (7) CONGRESSIONAL NOTIFICATION AND RE-
22 PORTING REQUIREMENTS.—The Secretary shall each
23 year notify the Congress of all petitions for relief
24 under this subsection and the status of all such peti-
25 tions.

1 (l) EXCEPTIONS FOR MEDICAL AND HUMANITARIAN
2 PURPOSES.—This title does not authorize controls on—

3 (1) medicine or medical supplies; or

4 (2) donations of items that are intended to
5 meet basic human needs, including food, educational
6 materials, seeds, hand tools, water resources equip-
7 ment, clothing and shelter materials, and basic
8 household supplies.

9 (m) SANCTITY OF EXISTING CONTRACTS AND LI-
10 CENSES.—

11 (1) IN GENERAL.—In the case of a control im-
12 posed under section 106 on the export of any items,
13 the President may not prohibit the export of those
14 items—

15 (A) in performance of a contract, agree-
16 ment, or other contractual commitment entered
17 into before the date on which the control is ini-
18 tially imposed, or the date on which the Presi-
19 dent reports to the Congress the President's in-
20 tention to impose the control, whichever date
21 occurs first, or

22 (B) under a license or other authorization
23 issued under this title before the date on which
24 the control is initially imposed, or the date on
25 which the President reports to the Congress the

1 President's intention to impose the control,
2 whichever date occurs first.

3 (2) EXCEPTION.—The prohibition in paragraph
4 (1) shall not apply if the President determines and
5 certifies to the Congress that—

6 (A) a breach of the peace poses a serious
7 and direct threat to the strategic interest of the
8 United States;

9 (B) the prohibition of exports under each
10 such contract, agreement, commitment, license,
11 or authorization will be directly instrumental in
12 remedying the situation posing the direct
13 threat; and

14 (C) the export controls will continue only
15 so long as the direct threat persists.

16 The authority of the President to make determina-
17 tions under this paragraph may not be delegated.

18 (n) PUBLICATION OF DECISIONS AND ACTIONS OF
19 THE SECRETARY.—

20 (1) IN GENERAL.—The Secretary shall publish
21 in the Federal Register, to the greatest extent prac-
22 ticable, actions, procedures, and decisions of the Sec-
23 retary under this title, taking into account restric-
24 tions on disclosure of classified or confidential infor-
25 mation. The Secretary shall publish in the Federal

1 Register calculations by the Secretary of commonly-
2 used control index parameters for commodities and
3 technologies, including all officially accepted compos-
4 ite theoretical performance calculations for comput-
5 ers and microprocessors, except in a case in which
6 a private party requested the calculation and asked
7 that it not be published.

8 (2) NOTICE OF REVISIONS.—Whenever the Sec-
9 retary makes any revision in the control index with
10 respect to any commodity or technology; or with re-
11 spect to any country or destination affected by con-
12 trols imposed under section 105 or section 106, the
13 Secretary shall publish in the Federal Register a no-
14 tice of such revision and shall specify in such notice
15 under which authority the revision is being made.

16 (c) NOTIFICATION OF THE PUBLIC; CONSULTATION
17 WITH INDUSTRY; RECORDKEEPING.—

18 (1) NOTIFICATION OF THE PUBLIC.—The Sec-
19 retary shall keep the public fully apprised of changes
20 in export control policy and procedures instituted
21 under this title with a view to encouraging trade.

22 (2) CONSULTATION WITH INDUSTRY.—The Sec-
23 retary shall meet regularly with export advisory com-
24 mittees appointed under section 104(f) in order to
25 obtain their views on United States export control

1 policy and the foreign availability of commodities
2 and technology.

3 (p) EXPORT CONTROL DUTIES.—

4 (1) ASSIGNMENT.—The Secretary shall ensure
5 that at least one full-time representative of the De-
6 partment of Commerce stationed in the People's Re-
7 public of China has duties related to the implemen-
8 tation of export controls under this title. These du-
9 ties shall include giving priority to conducting
10 postshipment verifications and prelicense checks,
11 and to using other means to ensure that United
12 States exports from the United States of dual use
13 items are not diverted to unauthorized end uses or
14 end users.

15 (2) AUTHORIZATION OF APPROPRIATIONS.—

16 There are authorized to be appropriated such sums
17 as may be necessary to carry out paragraph (1).

18 (q) AUTHORIZATION FOR TECHNICAL DATA.—A li-
19 cense authorizing the export of any commodities or tech-
20 nology under this title shall also authorize the export of
21 operation technical data related to such commodities or
22 technology, if the technical level of the data does not ex-
23 ceed the minimum necessary to install, repair, maintain,
24 inspect, operate, or use the commodities or technology.

1 (r) LICENSES FOR SPARE PARTS NOT REQUIRED.—

2 A license shall not be required under this title for replace-
3 ment parts which are exported to replace on a one-for-
4 one basis parts that were in a commodity that was lawfully
5 exported from the United States, unless the President de-
6 termines that such a license should be required for such
7 parts.

8 SEC. 115. ANNUAL REPORT.

9 (a) CONTENTS.—Not later than March 1 of each
10 year, the Secretary shall submit to the Congress a report
11 on the administration of this title during the preceding
12 calendar year. All agencies shall cooperate fully with the
13 Secretary in providing information for such report. Such
14 report shall include detailed information on the following:

15 (1) The implementation of the policies set forth
16 in section 103, including delegations of authority by
17 the President under section 104(d), consultations
18 with the export advisory committees established
19 under section 104(f), and any changes in the exer-
20 cise of the authorities contained in sections 105(a),
21 106(a), 107(a), and 108(a).

22 (2) With respect to multilateral export controls
23 imposed or maintained under section 105, the fol-
24 lowing:

1 (A) Adjustments to multilateral export
2 controls.

3 (B) The exercise of the Secretary's author-
4 ity under section 105(e).

5 (3) Determinations made under section 114(k),
6 the criteria used to make such determinations, the
7 removal of any export controls under such section,
8 and any evidence demonstrating a need to maintain
9 export controls notwithstanding determinations
10 made under paragraph (2) of section 114(k).

11 (4) Short supply controls and monitoring under
12 section 107.

13 (5) Organizational and procedural changes un-
14 dertaken in furtherance of the policies set forth in
15 this title, including changes to increase the efficiency
16 of the export licensing process and to fulfill the re-
17 quirements of section 109, including an accounting
18 of appeals received, and actions taken pursuant
19 thereto, under section 109(h).

20 (6) Violations under section 110 and enforce-
21 ment activities under section 113.

22 (7) The issuance of regulations under this title.

23 (8) The results, in as much detail as may be in-
24 cluded consistent with the strategic and political in-
25 terests of the United States and the need to main-

tain the confidentiality of proprietary information, of the reviews of the multilateral control list, and any revisions to the list resulting from such reviews, required by section 105.

(b) COMPARATIVE REPORT ON EXPORT CONTROL SYSTEMS AMONG COUNTRIES.—The Secretary shall include, in each annual report under subsection (a), a description of significant differences between the export control laws and regulations of the United States and its major trade competitors, particularly as these differences relate to the implementation of multilateral export control regimes. The Secretary shall include—

(1) an assessment of the impact of these differences on important interests of the United States;

(2) a description of the extent to which the executive branch intends to address these differences; and

(3) a listing of unilateral controls and embargoes imposed by the United States that are in effect, with a quantification of their economic impact, including the effect of such controls and embargoes on employment in the United States.

(c) GAO REPORT.—The Comptroller General shall prepare and submit to the Congress, not later than 120

1 days after each report under subsection (b) is submitted,
2 an analysis of such report.

3 SEC. 116. DEFINITIONS.

4 As used in this title:

5 (1) AFFILIATE.—The term “affiliate” includes
6 both governmental entities and commercial entities
7 that are controlled in fact by a country.

8 (2) ADHERENT.—An “adherent” to a multilat-
9 eral regime is a country that is a member of that
10 regime or that, pursuant to an international under-
11 standing to which the United States is a party, con-
12 trols exports in accordance with the criteria and
13 standards of that regime.

14 (3) AUSTRALIA GROUP.—The term “Australia
15 Group” means the multilateral regime in which the
16 United States participates that seeks to prevent the
17 proliferation of chemical and biological weapons.

18 (4) CHEMICAL WEAPONS CONVENTION.—The
19 term “Chemical Weapons Convention” refers to the
20 Convention on the Prohibition of the Development,
21 Production, Stockpiling and Use of Chemical Weap-
22 ons and on Their Destruction of 1992.

23 (5) COMMODITY.—The term “commodity”
24 means any article, natural or manmade substance,
25 material, software, source code, supply, or manufac-

1 tured product, including inspection and test equip-
2 ment, and excluding technical data.

3 (6) CONTROL OR CONTROLLED.—The terms
4 “control” and “controlled” refer to a licensing re-
5 quirement, a written reexport authorization require-
6 ment, or a prohibition on an export.

7 (7) CONTROL INDEX.—The term “control
8 index” means the United States Commodity Control
9 Index established under section 104(b)(1).

10 (8) CONTROLLED COUNTRY.—The term “con-
11 trolled country” means a country to which exports
12 are controlled under section 105 or 106.

13 (9) EXPORT.—(A) The term “export”—

14 (i) means—

15 (I) an actual shipment, transfer, or
16 transmission of items out of the United
17 States; and

18 (II) a transfer to any person of items
19 either within the United States or outside
20 of the United States with the knowledge or
21 intent that the items will be shipped,
22 transferred, or transmitted outside the
23 United States; and

24 (ii) includes the term “reexport”.

1 (B) The Secretary may further define the term
2 export by regulation to include, among other con-
3 cepts, that—

4 (i) a transfer of items in the United States
5 to an embassy or affiliate of a country is an ex-
6 port to the country,

7 (ii) disclosure of technology to a foreign
8 person is deemed to be an export to the country
9 of which he or she is a national, and

10 (iii) transfer of effective control from one
11 country to another over a satellite above the
12 earth is an export from one country to another.

13 (C) As used in this paragraph, the term “for-
14 eign person” means—

15 (i) an individual who is not a United
16 States citizen or an alien admitted for perma-
17 nent residence to the United States;

18 (ii) any corporation, partnership, business
19 association, society, trust, organization, or other
20 nongovernmental entity created or organized
21 under the laws of a foreign country or that has
22 its principal place of business outside the Unit-
23 ed States; and

1 (iii) any governmental entity of a foreign
2 country that is operating as a business enter-
3 prise.

4 (10) EXPORT CONTROL REGIME, MULTILAT-
5 ERAL EXPORT CONTROL REGIME, MULTILATERAL
6 REGIME, AND REGIME.—The terms “export control
7 regime”, “multilateral export control regime”, “mul-
8 tilateral regime”, and “regime” each means an
9 international agreement or an arrangement among
10 two or more countries, including the United States,
11 a purpose of which is to coordinate national export
12 control policies of participating countries regarding
13 certain items. Such terms include the Australia
14 Group, the Wassenaar Arrangement, the MTCR,
15 and the Nuclear Supplies Group.

16 (11) FOREIGN AVAILABILITY, AVAILABLE IN
17 FACT TO CONTROLLED COUNTRIES.—The terms
18 “foreign availability” and “available in fact to con-
19 trolled countries” each include production or avail-
20 ability of any item from any country—

21 (A) in which the item is not restricted for
22 export to any controlled country; or

23 (B) in which such export restrictions are
24 determined by the Secretary to be ineffective.

1 For purposes of subparagraph (B), the mere inclu-
2 sion of items on a list of items subject to export con-
3 trols imposed pursuant to a multilateral export con-
4 trol regime shall not alone constitute credible evi-
5 dence that the government of a country provides an
6 effective means of controlling the export of such
7 items to controlled countries.

8 (12) ITEM.—The term “item” means any com-
9 modity or technology.

10 (13) LICENSING REQUIREMENT.—The term “li-
11 censing requirement” includes any restriction or
12 condition, including recordkeeping and reporting,
13 imposed by the Secretary under this title in licensing
14 the export of a commodity, technology, or other in-
15 formation.

16 (14) MEMBER OF AN EXPORT CONTROL RE-
17 GIME.—A “member” of an export control regime,
18 multilateral export control regime, multilateral re-
19 gime, or regime is a country that participates in that
20 regime.

21 (15) MISSILE.—The term “missile” means any
22 missile system or component listed in category I of
23 the MTCR Annex, and any other unmanned delivery
24 system or component of similar capability, as well as

1 the specially designed production facilities for these
2 systems.

3 (16) MISSILE TECHNOLOGY CONTROL REGIME;
4 MTCR.—The term “Missile Technology Control Re-
5 gime” or “MTCR” means the policy statement and
6 guidelines between the United States, the United
7 Kingdom, the Federal Republic of Germany, France,
8 Italy, Canada, and Japan, announced on April 16,
9 1987, to restrict sensitive missile-related transfers
10 based on the MTCR Annex, and any amendments
11 thereto.

12 (17) MTCR ANNEX.—The term “MTCR
13 Annex” means the Equipment and Technology
14 Annex of the MTCR, and any amendments thereto.

15 (18) NUCLEAR EXPLOSIVE DEVICE.—The term
16 “nuclear explosive device” means any device, wheth-
17 er assembled or disassembled, that is designed to
18 produce an instantaneous release of an amount of
19 nuclear energy from special nuclear material that is
20 greater than the amount of energy that would be re-
21 leased from the detonation of one pound of trinitro-
22 toluene (TNT).

23 (19) NUCLEAR SUPPLIERS’ GROUP.—The term
24 “Nuclear Suppliers’ Group” means the multilateral
25 arrangement in which the United States participates

1 whose purpose is to restrict the transfers of items
2 with relevance to the nuclear fuel cycle or nuclear
3 explosive applications.

4 (20) PERSON.—Except as provided in section
5 111, the term “person” includes—

6 (A) the singular and the plural and any in-
7 dividual, partnership, corporation, business as-
8 sociation, society, trust, organization, or any
9 other group created or organized under the laws
10 of a country; or

11 (B) any government, or any governmental
12 body, corporation, trust, agency, department, or
13 group, operating as a business enterprise.

14 (21) REEXPORT.—The term “reexport” means
15 the shipment, transfer, transshipment, or diversion
16 of items from one foreign country to another.

17 (22) SECRETARY.—The term “Secretary”
18 means the Secretary of Commerce or any successor
19 officer performing functions of the Secretary of
20 Commerce under this title.

21 (23) TECHNOLOGY.—The term “technology”
22 means specific information that is necessary for the
23 development, production, or use of a commodity, in-
24 cluding source code, and that takes the form of tech-
25 nical data or technical assistance.

1 (24) UNILATERAL AND UNILATERALLY.—The
2 terms “unilateral” and “unilaterally”, with respect
3 to an export control on a commodity or technology,
4 refer to a control that is not similarly imposed in
5 similar circumstances by any other country, and that
6 materially restricts the export of the commodity or
7 technology.

8 (25) UNITED STATES.—The term “United
9 States” means the States of the United States, the
10 District of Columbia, and any commonwealth, terri-
11 tory, dependency, or possession of the United States,
12 and includes the Outer Continental Shelf, as defined
13 in section 2(a) of the Outer Continental Shelf Lands
14 Act (43 U.S.C. 1331(a)).

15 (26) UNITED STATES PERSON.—The term
16 “United States person” means any United States
17 citizen, resident, or national (other than an individ-
18 ual resident outside the United States and employed
19 by other than a United States person), any domestic
20 concern (including any permanent domestic estab-
21 lishment of any foreign concern) and any foreign
22 subsidiary or affiliate (including any permanent for-
23 eign establishment) of any domestic concern which is
24 controlled in fact by such domestic concern, as de-
25 termined under regulations of the President.

1 (27) WASSENAAR ARRANGEMENT.—The term
2 “Wassenaar Arrangement” means the multilateral
3 regime in which the United States participates that
4 seeks to promote transparency and responsibility
5 with regard to the transfers of conventional arma-
6 ments and sensitive dual-use goods and technologies.

7 (28) WEAPON OF MASS DESTRUCTION.—The
8 term “weapon of mass destruction” means any
9 chemical, biological, or nuclear weapon, including a
10 nuclear explosive device.

11 SEC. 117. EFFECTS ON OTHER ACTS.

12 (a) COMMODITY JURISDICTION.—

13 (1) COORDINATION OF CONTROLS.—The au-
14 thority granted under this title and under section 38
15 of the Arms Export Control Act (22 U.S.C. 2778)
16 shall be exercised in such a manner as to achieve ef-
17 fective coordination between the licensing systems
18 under this title and such section 38 and to share in-
19 formation regarding the trustworthiness of parties.

20 (2) ELIMINATION OF OVERLAPPING CON-
21 TROLS.—Notwithstanding any other provision of
22 law, no item may be included on both the control
23 index and the United States Munitions List after
24 the date of the enactment of this Act.

1 (3) COMMODITY JURISDICTION DISPUTE RESO-
2 LUTION.—The President shall establish procedures
3 for the resolution of commodity jurisdiction disputes
4 among departments and agencies of the United
5 States. Such disputes shall normally be resolved
6 within 60 days, and the procedures shall allow dis-
7 putes to be referred to the President normally within
8 90 days. These procedures shall also—

9 (A) require the Secretary and the Sec-
10 retary of State to refer matters to each other
11 in accordance with their respective jurisdictions;

12 (B) require transparency, among the Sec-
13 retary, the Secretary of State, and the Sec-
14 retary of Defense, in commodity jurisdiction
15 cases and commodity classification requests and
16 determinations;

17 (C) provide for interagency meetings and
18 consultations to permit the free exchange of
19 views regarding significant jurisdictional issues;
20 and

21 (D) provide deadlines for action and stand-
22 ards for decision, and ensure that disputes that
23 cannot be resolved may be referred to the Presi-
24 dent by the Secretary of State, the Secretary of
25 Defense, or the Secretary of Commerce.

1 (b) IN GENERAL.—Except as otherwise provided in
2 this title, nothing in this title shall be construed to modify,
3 repeal, supersede, or otherwise affect the provisions of any
4 other laws authorizing control over exports of any com-
5 modities, technology, or other information.

6 (c) LICENSING PROCESS.—The provisions of section
7 109 shall supersede the procedures published pursuant to
8 section 309(c) of the Nuclear Non-Proliferation Act of
9 1978 (42 U.S.C. 2139a(c)) to the extent such procedures
10 are inconsistent with the provisions of section 109.

11 (d) AMENDMENTS TO THE INTERNATIONAL EMER-
12 GENCY ECONOMIC POWERS ACT.—

13 (1) EXERCISE OF PRESIDENTIAL AUTHORITY.—

14 (A) Section 204(b) of the International Emergency
15 Economic Powers Act (50 U.S.C. 1703(b)) is
16 amended—

17 (i) by striking “and” at the end of para-
18 graph (4);

19 (ii) by striking the period at the end of
20 paragraph (5) and inserting “; and”; and

21 (iii) by adding at the end the following:

22 “(6) if the action is being taken unilaterally—

23 “(A) why the President believes the action
24 is necessary to meet the extraordinary threat
25 referred to in paragraph (2); and

1 “(B) what steps the President is taking to
2 gain multilateral support for the action.”.

3 (B) Section 204(c) of that Act (50 U.S.C.
4 1703(c)) is amended—

5 (i) by striking “(5)” and inserting “(6)”;
6 and

7 (ii) by striking the period and inserting “,
8 and, in the case of controls referred to in para-
9 graph (6) of subsection (b), the President shall
10 report to the Congress on the economic losses
11 that have occurred as a result of the unilateral
12 action”.

13 (2) CONFIDENTIALITY OF INFORMATION.—The
14 International Emergency Economic Powers Act is
15 amended—

16 (A) by redesignating section 208 as section
17 209; and

18 (B) by inserting after section 207 the fol-
19 lowing:

20 “SEC. 208. CONFIDENTIALITY OF INFORMATION.

21 “(a) EXEMPTIONS FROM DISCLOSURE.—Information
22 obtained under this title before or after the enactment of
23 this section may be withheld only to the extent permitted
24 by statute, except that information submitted, obtained,

1 or considered in connection with any transaction that
2 would otherwise be prohibited under this title, including—

3 “(1) the license or other authorization itself,

4 “(2) classification requests or other inquiries on
5 the applicability of export license requirements to a
6 proposed transaction or series of transactions,

7 “(3) information or evidence obtained in the
8 course of any investigation, and

9 “(4) information obtained or furnished under
10 this title in connection with international agree-
11 ments, treaties, or obligations,

12 shall be withheld from public disclosure, and shall not be
13 subject to disclosure under section 552 of title 5, United
14 States Code, unless the release of such information is de-
15 termined by the Secretary or the Secretary of the Treas-
16 ury to be in the national interest. In the case of informa-
17 tion obtained or furnished under this title in connection
18 with international agreements, treaties, or obligations,
19 such a determination may be made only after consultation
20 with the Secretary of State.

21 “(b) INFORMATION TO CONGRESS AND GAO.—

22 “(1) IN GENERAL.—Nothing in this title shall
23 be construed as authorizing the withholding of infor-
24 mation from the Congress or from the General Ac-
25 counting Office.

1 “(2) AVAILABILITY TO THE CONGRESS.—

2 “(A) IN GENERAL.—All information ob-
3 tained at any time under this title regarding
4 the control of exports, including any report or
5 license application required under this title,
6 shall be made available to any committee or
7 subcommittee of Congress of appropriate juris-
8 diction upon the request of the chairman or
9 ranking minority member of such committee or
10 subcommittee.

11 “(B) PROHIBITION ON FURTHER DISCLO-
12 SURE.—No committee, subcommittee, or Mem-
13 ber of Congress shall disclose any information
14 obtained under this title or previous Acts re-
15 garding the control of exports which is submit-
16 ted on a confidential basis to the Congress
17 under subparagraph (A) unless the full commit-
18 tee to which the information is made available
19 determines that the withholding of the informa-
20 tion is contrary to the national interest.

21 “(3) AVAILABILITY TO THE GAO.—

22 “(A) IN GENERAL.—Notwithstanding para-
23 graph (1), information referred to in paragraph
24 (2) shall, consistent with the protection of intel-
25 ligence, counterintelligence, and law enforce-

1 ment sources, methods, and activities, as deter-
2 mined by the agency that originally obtained
3 the information, and consistent with the provi-
4 sions of section 716 of title 31, United States
5 Code, be made available only by the agency,
6 upon request, to the Comptroller General of the
7 United States or to any officer or employee of
8 the General Accounting Office authorized by
9 the Comptroller General to have access to such
10 information.

11 “(B) PROHIBITION ON FURTHER DISCLO-
12 SURES.—No officer or employee of the General
13 Accounting Office shall disclose, except to the
14 Congress in accordance with this subsection,
15 any such information which is submitted on a
16 confidential basis and from which any individ-
17 ual can be identified.

18 “(c) PENALTIES FOR DISCLOSURE OF CONFIDEN-
19 TIAL INFORMATION.—Any officer or employee of the Unit-
20 ed States, or any department or agency thereof, who pub-
21 lishes, divulges, discloses, or makes known in any manner
22 or to any extent not authorized by law any confidential
23 information that—

24 “(1) he or she obtains in the course of his or
25 her employment or official duties or by reason of any

1 examination or investigation made by, or report or
2 record made to or filed with, such department or
3 agency, or officer or employee thereof, and

4 “(2) is exempt from disclosure under this sec-
5 tion,

6 shall be fined not more than \$10,000, or imprisoned not
7 more than 1 year, or both, shall be removed from office
8 or employment, and shall be subject to a civil penalty of
9 not more than \$1,000.”.

10 (3) PENALTIES.—Section 206 of the Inter-
11 national Emergency Economic Powers Act (50
12 U.S.C. 1705) is amended—

13 (A) in subsection (a) by inserting “, or at-
14 tempts to violate,” after “violates”; and

15 (B) in subsection (b) by inserting “, or
16 willfully attempts to violate,” after “violates”.

17 (e) AMENDMENTS TO THE TRADING WITH THE
18 ENEMY ACT.—Section 16 of the Trading With the Enemy
19 Act (50 U.S.C. App. 16) is amended—

20 (1) in subsection (a) by inserting “, or attempts
21 to violate,” after “violates” each place it appears;
22 and

23 (2) in subsection (b)(1) by inserting “, or at-
24 tempts to violate,” after “violates”.

25 (f) REPORT ON OFAC AND ODTC.—

1 (1) STUDY ON OFAC.—The Secretary of the
2 Treasury shall study ways to make the operations of
3 the Office of Foreign Assets Control of the Depart-
4 ment of the Treasury more effective and efficient in
5 responding to licensing requests and other inquiries
6 of United States exporters, including through the
7 upgrading of technology in that office.

8 (2) STUDY ON ODTC.—The Secretary of State
9 shall study ways to make the Office of Defense
10 Trade Controls of the Department of State more ef-
11 fective and efficient in responding to licensing re-
12 quests and other inquiries of United States export-
13 ers, including through the upgrading of technology
14 in that office.

15 (3) SUBMISSION OF REPORTS.—The Secretary
16 of the Treasury and the Secretary of State shall, not
17 later than 6 months after the date of the enactment
18 of this Act, each submit to the Congress a report on
19 the study conducted by that Secretary under this
20 subsection.

21 **SEC. 118. SECONDARY ARAB BOYCOTT.**

22 (a) SENSE OF CONGRESS.—

23 (1) ENDING SECONDARY BOYCOTT.—It is the
24 sense of the Congress that the countries of the Arab
25 League should end the secondary Arab boycott.

1 (2) ACTIONS TO END SECONDARY BOYCOTT.—

2 The United States will consider the secondary Arab
3 boycott to have ended when—

4 (A) the Arab League issues a public pro-
5 nouncement that the Arab League has ended
6 the secondary Arab boycott;

7 (B) all activities carried out by the Central
8 Office for the Boycott of Israel in support of
9 the secondary Arab boycott have been termi-
10 nated;

11 (C) the Arab League and the individual
12 countries that are members of the Arab League
13 have terminated the practice of barring United
14 States persons and foreign companies that do
15 not comply with the secondary Arab boycott
16 from doing business with countries that are
17 members of the Arab League, and have de-
18 clared null and void any existing list of such
19 barred persons and companies; and

20 (D) the Arab League, and the individual
21 countries that are the members of the Arab
22 League, have ceased requesting United States
23 persons from taking actions prohibited under
24 section 108(a).

1 (b) DEFINITION.—For purposes of this section, the
2 term “secondary Arab boycott” means the refusal to do
3 business with persons who do not comply with requests
4 to take any action prohibited under section 108(a) with
5 respect to Israel.

6 SEC. 119. CONFORMING AMENDMENTS.

7 (a) ARMS EXPORT CONTROL ACT.—

8 (1) Section 38 of the Arms Export Control Act
9 (22 U.S.C. 2778) is amended—

10 (A) in subsection (e)—

11 (i) in the first sentence by striking
12 “subsections (c)” and all that follows
13 through “12 of such Act” and inserting
14 “subsections (b), (c), (d) and (e) of section
15 110 of the Export Act of 1996, by sub-
16 sections (a) and (b) of section 113 of such
17 Act, and by section 114(g) of such Act”;
18 and

19 (ii) in the third sentence by striking
20 “11(c) of the Export Administration Act of
21 1979” and inserting “110(c) of the Export
22 Act of 1996”; and

23 (B) in subsection (g)(1)(A) by striking
24 clause (ii) and inserting the following:

1 “(ii) section 110 of the Export Act of
2 1996,”.

3 (2) Section 39A(c) of the Arms Export Control
4 Act, as added by the Foreign Relations Authoriza-
5 tion Act, Fiscal Years 1994 and 1995, is amended—

6 (A) by striking “(c),” and all that follows
7 through “12(a)” and inserting “(c), (d), and (e)
8 of section 110, section 112(c), and subsections
9 (a) and (b) of section 113, of the Export Act
10 of 1996”; and

11 (B) by striking “11(c)” and inserting
12 “110(c)”.

13 (3) Section 40(k) of the Arms Export Control
14 Act (22 U.S.C. 2780(k)) is amended—

15 (A) by striking “11(c), 11(e), 11(g), and
16 12(a) of the Export Administration Act of
17 1979” and inserting “110(b), 110(c), 110(e),
18 113(a), and 113(b) of the Export Act of 1996”;
19 and

20 (B) by striking “11(c)” and inserting
21 “110(c)”.

22 (4) Section 73A of the Arms Export Control
23 Act, as added by the Foreign Relations Authoriza-
24 tion Act, Fiscal Years 1995 and 1995, is amended

1 by striking “a MTCR adherent” and inserting “an
2 MTCR adherent”.

3 (b) OTHER PROVISIONS OF LAW.—

4 (1) Section 5(b)(4) of the Trading with the
5 Enemy Act (12 U.S.C. 95a(4); 50 U.S.C. App.
6 5(b)(4)) is amended by striking “section 5 of the
7 Export Administration Act of 1979, or under section
8 6 of that Act to the extent that such controls pro-
9 mote the nonproliferation or antiterrorism policies of
10 the United States” and inserting “the Export Act of
11 1996”.

12 (2) Section 16(a) of the Trading with the
13 Enemy Act (50 U.S.C. App. 16(a)) is amended by
14 striking “participants” and inserting “participates”.

15 (3) Section 502B(a)(2) of the Foreign Assist-
16 ance Act of 1961 (22 U.S.C. 2304(a)(2)) is amend-
17 ed in the second sentence—

18 (A) by striking “Export Administration
19 Act of 1979” the first place it appears and in-
20 serting “Export Act of 1996”; and

21 (B) by striking “Administration Act of
22 1979)” and inserting “Act of 1996)”.

23 (4)(A) Section 140(a) of the Foreign Relations
24 Authorization Act, Fiscal Years 1988 and 1989 (22
25 U.S.C. 2656f(a)) is amended—

1 (i) in paragraph (1) by inserting “or sec-
2 tion 106(i) of the Export Act of 1996” after
3 “Act of 1979”; and

4 (ii) in paragraph (2) by striking “6(j) of
5 the Export Administration Act of 1979” and
6 inserting “106(i) of the Export Act of 1996”.

7 (B) For purposes of the report required by
8 March 31, 1996, under section 140(a) of the For-
9 eign Relations Authorization Act, Fiscal Years 1988
10 and 1989, the reference in paragraph (2) of such
11 section to “section 106(i) of the Export Act of
12 1996” shall be deemed to refer to “section 6(j) of
13 the Export Administration Act of 1979 or section
14 106(i) of the Export Act of 1996”.

15 (5) Section 40(e)(1) of the State Department
16 Basic Authorities Act of 1956 (22 U.S.C.
17 2712(e)(1)) is amended by striking “6(j)(1) of the
18 Export Administration Act of 1979” and inserting
19 “106(i)(1) of the Export Act of 1996”.

20 (6) Section 110 of the International Security
21 and Development Cooperation Act of 1980 (22
22 U.S.C. 2778a) is amended by striking “Administra-
23 tion Act of 1979” and inserting “Act of 1996”.

24 (7) Section 205(d)(4) of the State Department
25 Basic Authorities Act of 1956 (22 U.S.C.

1 4305(d)(4)) is amended by striking “6(j) of the Ex-
2 port Administration Act of 1979” and inserting
3 “106(i) of the Export Act of 1996”.

4 (8) Section 203(b)(3) of the International
5 Emergency Economic Powers Act (50 U.S.C.
6 1702(b)(3)) is amended by striking “section 5 of the
7 Export Administration Act of 1979, or under section
8 6 of such Act to the extent that such controls pro-
9 mote the nonproliferation or antiterrorism policies of
10 the United States” and inserting “the Export Act of
11 1996”.

12 (9) Section 491(f) of the Forest Resources Con-
13 servation and Shortage Relief Act of 1990 (16
14 U.S.C. 620c(f)) is repealed.

15 (c) REPEAL.—The Export Administration Act of
16 1979 is repealed.

17 **SEC. 120. EXPIRATION DATE.**

18 This title expires on June 30, 2001.

19 **SEC. 121. SAVINGS PROVISIONS.**

20 (a) IN GENERAL.—All delegations, rules, regulations,
21 orders, determinations, licenses, or other forms of admin-
22 istrative action which have been made, issued, conducted,
23 or allowed to become effective under—

195

(1) the Export Control Act of 1949, the Export Administration Act of 1969, or the Export Administration Act of 1979, or

(2) those provisions of the Arms Export Control Act which are amended by section 119,

and are in effect at the time this title takes effect, shall continue in effect according to their terms until modified, superseded, set aside, or revoked under this title or the Arms Export Control Act.

(b) ADMINISTRATIVE AND JUDICIAL PROCEEDINGS.—

(1) EXPORT ADMINISTRATION ACT.—This title shall not affect any administrative or judicial proceedings commenced or any application for a license made, under the Export Administration Act of 1979, which is pending at the time this title takes effect. Any such proceedings, and any action on such application, shall continue under the Export Administration Act of 1979 as if that Act had not been repealed.

(2) OTHER PROVISIONS OF LAW.—This title shall not affect any administrative or judicial proceedings commenced or any application for a license made, under those provisions of the Arms Export Control Act which are amended by section 119, if

1 such proceedings or application is pending at the
 2 time this title takes effect. Any such proceedings,
 3 and any action on such application, shall continue
 4 under those provisions as if those provisions had not
 5 been amended by section 119.

6 (c) TREATMENT OF CERTAIN DETERMINATIONS.—

7 Any determination with respect to the government of a
 8 foreign country under section 6(j) of the Export Adminis-
 9 tration Act of 1979, that is in effect at the time this title
 10 takes effect, shall, for purposes of this title or any other
 11 provision of law, be deemed to be made under section
 12 106(i) of this Act until superseded by a determination
 13 under such section 106(i).

14 **TITLE II—NUCLEAR** 15 **PROLIFERATION PREVENTION**

16 **SEC. 201. REPEAL OF TERMINATION OF PROVISIONS OF** 17 **THE NUCLEAR PROLIFERATION PREVENTION** 18 **ACT OF 1994.**

19 (a) REPEAL.—Part D of the Nuclear Proliferation
 20 Prevention Act of 1994 (part D of title VIII of the For-
 21 eign Relations Authorization Act, Fiscal Years 1994 and
 22 1995; Public Law 103–236; 108 Stat. 525) is hereby re-
 23 pealed.

24 (b) PRESIDENTIAL DETERMINATIONS.—Section
 25 824(c) of the Nuclear Proliferation Prevention Act of

1 1994 is amended by striking “, in writing after oppor-
2 tunity for a hearing on the record,”.

3 (c) JUDICIAL REVIEW.—Section 824 of the Nuclear
4 Proliferation Prevention Act of 1994 is amended—

5 (1) by striking subsection (e); and

6 (2) by redesignating subsections (f) through (k)
7 as subsections (e) through (j), respectively.

8 (d) CONFORMING AMENDMENT.—Section
9 102(b)(2)(G) of the Arms Export Control Act (22 U.S.C.
10 2799aa-1(b)(2)(G)) is amended by striking “section 6 of
11 the Export Administration Act of 1979” and inserting
12 “section 105 or 106 of the Export Act of 1996”.

13 SEC. 202. SEEKING MULTILATERAL SUPPORT FOR UNILAT-
14 ERAL SANCTIONS.

15 The Secretary of State, in consultation with appro-
16 priate departments and agencies, shall seek the support
17 of other countries for sanctions imposed under the Nuclear
18 Proliferation Prevention Act of 1994 or the amendments
19 made by that Act.

**AMENDMENT TO THE AMENDMENT IN THE
NATURE OF A SUBSTITUTE TO H.R. 361
OFFERED BY MR. ROTH**

In section 114(j), on page 156, line 24, insert the
following:

- 1 (5) EXCEPTIONS. Paragraphs (1) and (2) do not require
- 2 any changes to regulations in effect on the effective date of this
- 3 Act and, notwithstanding paragraphs (1) and (2), controls may
- 4 be imposed on commodities or technology which, subsequent to
- 5 March 1, 1996, have been or are transferred from export control
- 6 jurisdiction of the Arms Export Control Act to control under this
- 7 title and have been designated by the President for exemption
- 8 from paragraphs (1) and (2).

**AMENDMENT TO THE AMENDMENT IN THE
NATURE OF A SUBSTITUTE TO H.R. 361
OFFERED BY MR. ROTH**

Page 157, beginning on line 22, strike "or is expected with a high degree of certainty to be available in fact in the near term, in sufficient quantity and comparable quality" and insert "under terms and conditions established by the Secretary with the concurrence of the Secretary of Defense,".

**AMENDMENT TO THE AMENDMENT IN THE
NATURE OF A SUBSTITUTE TO H.R. 361
OFFERED BY MR. GEJDENSON**

Add at the end of title II the following:

1 **SEC. 203. SANCTIONS UNDER NUCLEAR PROLIFERATION**
2 **PREVENTION ACT OF 1994.**

3 Section 102(b)(2) of the Arms Export Control Act
4 (22 U.S.C. 2799aa-1(b)(2)) is amended by adding at the
5 end the following:

6 “(H)(i) The President shall prohibit the impor-
7 tation into the United States of specific products
8 produced in that country by persons who have en-
9 gaged in the activities described in paragraph (1)
10 that were the basis of the President’s determination
11 under such paragraph.

12 “(ii) In the event that it is not possible to iden-
13 tify the persons who have engaged in the activities
14 described in paragraph (1) that were the basis of the
15 President’s determination under such paragraph, the
16 President shall prohibit the importation into the
17 United States of products produced in that country
18 by those persons that the President shall designate
19 as most closely identified with those activities.

2

1 “(iii) For purposes of this subparagraph, the
2 term ‘person’ means—

3 “(I) a natural person;

4 “(II) a corporation, business association,
5 partnership, society, or trust, or any other non-
6 governmental entity, organization, or group;

7 “(III) a governmental entity operating as a
8 business enterprise;

9 “(IV) a division or office of a governmental
10 department; or

11 “(V) a military unit or successor to such
12 unit.

13 “(iv) The prohibition on imports imposed under
14 this subparagraph shall be in addition to any other
15 prohibition on imports in effect before the Presi-
16 dent’s determination under paragraph (1).

Amend the table of contents accordingly.



**EN BLOC AMENDMENT TO THE AMENDMENT IN
THE NATURE OF A SUBSTITUTE TO H.R. 361
OFFERED BY MR. GILMAN**

In section 114(p), insert the following after paragraph (1) (page 168, after line 14) and redesignate the succeeding paragraph accordingly:

- 1 (2) OTHER RESOURCES.—The Secretary shall
2 ensure that appropriate resources are made available
3 and, if necessary, new procedures established to as-
4 sist the representative or representatives of the De-
5 partment of Commerce referred to in paragraph (1)
6 in carrying out their duties and to ensure that sen-
7 sitive items are not diverted to inappropriate end
8 uses or end users in the People's Republic of China.
9 Efforts to carry out this paragraph shall include ap-
10 propriate coordination with United States officials in
11 Hong Kong to ensure that sensitive items exported
12 to Hong Kong are protected from diversion.

In section 109(a)(5), on page 82, lines 17 and 18, strike "intelligence information, except that the consideration of intelligence information" and insert "results of other United States Government actions, such as actions by the Committee on Foreign Investment in the United States, investigations of diversions from authorized end

uses or end users, and intelligence information, except that the consideration of such information”.

In section 112(d)(1), on page 126, line 21, insert “including any diversion of goods or technology from an authorized end use or end user,” after “this title,”.

AMENDMENT TO THE AMENDMENT IN THE
NATURE OF A SUBSTITUTE TO H.R. 361
OFFERED BY MR. CAMPBELL

Add the following at the end of section 110(j) (page 101, line 5): "In an action brought under this subsection, unless the court finds that the interests of justice require otherwise, the court shall designate the substantially prevailing party or parties in the action, and the remaining parties shall pay the reasonable attorneys' fees of the substantially prevailing party or parties in such proportion as the court shall determine."



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